

Memorandum 2007-43

**Technical and Minor Substantive Statutory Corrections:
References to Recording Technology
(Comments on Tentative Recommendation)**

The comment period has ended relating to the Commission's tentative recommendation on *Technical and Minor Substantive Statutory Corrections: References to Recording Technology* (April 2007). The recommendation updates references to "tape" recording in various code sections, to include more modern forms of recording technology (e.g., digital recording).

The Commission received one comment on the tentative recommendation, from the California Court Reporters Association (hereafter, "CCRA"). CCRA's comment is attached as an Exhibit.

This memorandum presents recommended revisions to the tentative recommendation, both to address CCRA's comment as well as to correct technical errors in the recommendation noted by the staff. A draft of a final recommendation incorporating these additional revisions is attached.

The memorandum also discusses whether the inclusion of one particular revision in the recommendation might hamper legislative enactment of the recommendation.

The issue now before the Commission is whether, after considering and deciding the issues presented below, to approve the attached draft recommendation as a final recommendation for printing and submission to the Legislature. **The staff recommends that the Commission adopt the draft recommendation as its final recommendation.**

RECORDING OF VICTIM'S TESTIMONY IN CERTAIN CRIMINAL CASES

CCRA's comment is directed to four sections of the Penal Code that provide for videotaping of the testimony of a victim or a minor in certain criminal cases. See Penal Code §§ 1346, 1346.1, 1347, and 1347.5.

In each of these sections, the recommendation revises references to videotape so that the sections instead reference video recording. In recommending the revisions, the Commission invited comment on whether allowing video recording on media other than videotape could cause problems relating to the testifying victim's privacy. The issue underlying the Commission's inquiry was whether allowing digital recording — particularly on a computer chip — would substantially increase the risk of undetectable alteration of the recording, or lead to a proliferation of unauthorized copies of the recording.

CCRA advises the Commission to be "very concerned" about the recommended revisions to these Penal Code sections. Exhibit p. 2. The group's comment includes an excerpt from an online article describing in some detail why modern technology has made it difficult if not impossible to ascertain whether a digital recording has been altered. CCRA also expresses its opinion that courts are often unaware of the "potential for mischief when dealing with digital recording." Exhibit p. 5.

This study was intended to modernize various statutory references without causing any substantive change. As at least one significant interest group contends that the recommended revisions to the Penal Code sections in question could have a substantive (and adverse) impact, the staff recommends that **the Commission delete the revisions to those sections from a final recommendation in this matter.**

MORE TECHNICAL CORRECTIONS

The staff has noted some technical errors in the existing text of a few sections in the recommendation, unrelated to the subject of this study. These errors include obsolete text (Penal Code § 868.7 (last sentence)), typographical errors (Penal Code §§ 298.1(b), 1347.5), and obsolete or incorrect cross references (Bus. & Prof. Code §§ 4846.5(b)(4), 25658.4(a)(1)(C), and Fam. Code § 10005(a)(7)). In the attached draft recommendation, the staff has incorporated recommended revisions correcting each of these errors.

The sections included in the draft recommendation have also been updated to reflect legislative action relating to those sections through the conclusion of the 2007 legislative session. This update deletes Education Code Section 94975 from the draft recommendation, as Section 94975 will be repealed by operation of Education Code Section 94999 on January 1, 2008.

Four other sections in the draft recommendation would be affected by enrolled bills currently awaiting signature by the Governor. The staff will continue to monitor the progress of these bills, and will make any changes to the recommendation necessitated by the enactment of any of these bills.

The draft recommendation also includes a further non-substantive revision of Penal Code Section 1191.15, in order to correct grammatically awkward language.

REVISION TO PENAL CODE SECTION 3043

One of the sections revised in the tentative recommendation is Penal Code Section 3043, relating to the right of a victim in a criminal matter to a representative at a defendant's parole hearing. The last paragraph of Section 3043 provides that the section may only be amended by a 2/3 vote in each house. If a revision to Section 4043 is included in the final recommendation in this study, Legislative Counsel will likely designate the entire recommendation as subject to a 2/3 vote requirement.

Such a designation should not be a significant problem, as the staff is hopeful the bill implementing the recommendation will be placed on the consent calendar of both houses, and receive unanimous approval.

Nevertheless, the designation of the bill as requiring a 2/3 vote could draw attention to the revision to Section 3043, which when viewed in isolation might be perceived as a substantive revision. The relevant portion of Section 3043 precludes a victim from sending a representative to the parole hearing in lieu of the victim, if a member of the victim's family has submitted an audiotaped or videotaped statement to the parole board. The recommended revision to the section would thus technically expand the grounds that would preclude the attendance of the victim representative, to include a submission of *any* type of audio or video recorded statement by a member of the victim's family.

Of course, if the Commission received word during the legislative process that the recommended revision to Section 3043 was causing a problem, the Commission could always drop the revision from the bill at that time.

On the other hand, once Section 3043 was perceived as a substantive revision, that perception might cause the rest of the bill to receive increased scrutiny, whether or not Section 3043 was ultimately dropped from the bill.

The Commission should approve either the inclusion or deletion of the revision to Section 3043 from a final recommendation in this study.

Respectfully submitted,

Steve Cohen
Staff Counsel



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Law Revision Commission
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CALIFORNIA LAW REVISION COMMISSION
4000 Middlefield Road, Room D-1
Palo Alto CA 94303-4739

Re: Comments to Technical and Minor Substantive Statutory
Corrections: References to Recording Technology (April 2007)

To Whom It May Concern:

Attached please find our comments to the above-referenced proposed amendment to PC sections 1346, 1346.1, 1347 & 1347.5, which provide for the videotaping of a victim's testimony in criminal cases when the victim is in a special class and the defendant is charged with a specified crime. .

Sincerely,

A handwritten signature in cursive script that reads "Sandra Bunch VanderPol".

Sandra Bunch VanderPol, CSR #3032
President
California Court Reporters Association

Technical and Minor Substantive Statutory Corrections: References to Recording Technology (April 2007)

The Commission proposes technical and minor substantive revisions to generalize and modernize existing statutory references to audio or video recording. Specifically, references to the use of a “tape,” “cassette,” “audiotape,” or “videotape” would be revised to instead refer in a generic manner to any recording technology.

The Commission invites comment whether recording using technology that “does not record on an easily identifiable and segregable medium” is a substantive change to those PC sections. Specifically, if such technology is used would it be more difficult for the court to control access to the recording increasing the likelihood of a breach of privacy.

The California Court Reporters Association (CCRA) believes the Commission should be very concerned.

Rationale:

The following is an excerpt from an article written by Robin Springer for SpeechTechMag.com, posted May 1, 2007:

“In the mid-1970s, audio recordings were entered into evidence primarily in the form of magnetic audiotape recordings. If an individual was going to falsify the evidence, he might splice a tape or make a new recording from the original recording. To remove portions of the tape or to add new tape, the falsifier would make a physical cut in the tape, add or remove the segment in question, and then put the tape back together with splicing tape. If the falsifier attempted to introduce this recording into evidence, upon examination, the splice would be visible or there would be a resultant dropout of sound, making it difficult or impossible for the falsifier to convince the court that the recording was genuine.

“If the falsifier doctored the original recording and then transferred it to another tape to circumvent the problems associated with splicing, he would have other issues with which to contend. This rerecording or copy tape would be, at minimum, a second-generation recording, and deterioration in the quality of the recording would be expected. This deterioration, depending on the extent, might be an indication of tampering.

“Additionally, the copy tape would not have the expected magnetic artifacts, called event signatures, that are caused by the energizing and de-energizing of record and erase heads on an audiotape recorder. These event signatures could be used by an expert to determine if a recording was made in a manner consistent with the protocol described by the person who made the recording, and could provide clues as to whether the recording had been edited during production.

“With digital audio recordings, however, event signatures are weaker in amplitude, if they exist at all, and with editing software, the artifacts can be removed entirely. Digital recordings also obviate the need for splicing. Because digital information can be so easily manipulated without physical signs of tampering, producer Michael Perna believes we have entered an era in which, ‘you can’t believe anything

you see or hear anymore.’

“As the proliferation of digital technologies continues, it may become increasingly difficult to distinguish between fiction and reality. Many current editing programs include tools such as spectrograms—the same tools used by experts to determine if an audio recording is authentic. As these products become more sophisticated, we can only expect the problem to become more pronounced.

”In response, courts may find that, because digital audio recordings lack the indicia of trustworthiness magnetic audiotape recordings have, the probative value of digital recordings is so diminished, their introduction into evidence should be curtailed.

Attorney Richard Weissman believes part of the solution may lie in requiring the proponent of the recording to provide stronger foundational evidence before an audio recording is deemed admissible. Fausto Tito Poza, an audio forensic consultant, believes the types of expert witnesses may evolve from those with linguistic backgrounds to those with backgrounds in computers, sound engineering or editing, and computer hacking. “

Additionally, CCRA's experience as a participant on the Reporting of the Record Task Force revealed that there is a serious gap between the absolute requirement for security and integrity of the record and the court's appreciation of the potential for mischief when dealing with digital recording.

#T-101

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

STAFF DRAFT

RECOMMENDATION

Technical and Minor Substantive Statutory
Corrections: References to Recording Technology

September 2007

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739
650-494-1335
<commission@clrc.ca.gov>

SUMMARY OF RECOMMENDATION

The Commission recommends technical and minor substantive revisions to generalize and modernize existing statutory references to audio or video recording.

Specifically, references to the use of a “tape,” “cassette,” “audiotape,” or “videotape” would be revised to instead refer in a generic manner to any recording technology. The revisions would thereby allow for use of existing digital recording technology that does not make use of a tape, as well as other recording technologies that may be developed in the future.

This recommendation was prepared pursuant to Government Code Section 8298.

TECHNICAL AND MINOR SUBSTANTIVE
STATUTORY CORRECTIONS: REFERENCES TO
RECORDING TECHNOLOGY

1 The Law Revision Commission is authorized by Government Code Section
2 8298 to study and recommend revisions correcting technical and minor substantive
3 defects in California statutes.

4 This recommendation proposes technical and minor substantive revisions to
5 generalize and modernize existing statutory references to audio or video
6 recording.¹ Specifically, references to the use of a “tape,” “cassette,” “audiotape,”
7 or “videotape” would be revised to instead refer in a generic manner to any
8 recording technology. The revisions would thereby allow for use of existing digital
9 recording technology that does not make use of a tape, as well as other recording
10 technologies that may be developed in the future.

11 The revisions are consistent with two prior reforms: (1) a bill enacted in 2002,
12 revising numerous references to “audiotape and “videotape” in the Civil Discovery
13 Act,² and (2) similar prior revisions to a limited number of sections in the Civil
14 Discovery Act recommended by the Commission in 2004, and subsequently
15 enacted into law.³

16 The recommended revisions generally involve replacing a reference to “audio
17 tape” or “videotape” with references to “audio recording” or “video recording,” or
18 involve similar substitutions of terms. An example would be the proposed revision
19 to Business and Professions Code Section 19870:

20 19870.

21 (d) All proceedings at a meeting of the commission relating to a license
22 application shall be recorded stenographically or ~~on audiotape or videotape~~ by
23 audio or video recording.

24

1. The recommendation would revise statutory text that will be in effect on January 1, 2008, including all legislative action through the conclusion of the 2007 legislative calendar. See 2007 Cal. Stat. ch. 176 (amending Bus. & Prof. Code §§ 19861, 19870), 2007 Cal. Stat. ch. 56 (amending Educ. Code § 56341.1), 2007 Cal. Stat. ch. 130 (amending Penal Code § 298.1).

2. 2002 Cal. Stat. ch. 1068.

3. See 2005 Cal. Stat. ch. 294; *Civil Discovery: Statutory Clarification and Minor Substantive Improvements*, 34 Cal. L. Revision Comm’n Reports 146 (2004).

CONTENTS

PROPOSED LEGISLATION	1
BUSINESS AND PROFESSIONS CODE.....	1
Bus. & Prof. Code § 2293 (amended). Professional competency examination	1
Bus. & Prof. Code § 3635 (amended). Continuing education	2
Bus. & Prof. Code § 4846.5 (amended). Continuing education	2
Bus. & Prof. Code § 8027 (amended). Court reporting school requirements.....	5
Bus. & Prof. Code § 17539.55 (amended). Sweepstakes using 900 numbers	9
Bus. & Prof. Code § 19513 (amended). Examinations	10
Bus. & Prof. Code § 19576 (amended). Recording of race for commercial purpose.....	11
Bus. & Prof. Code § 19861 (amended). Licensing of gambling establishment.....	11
Bus. & Prof. Code § 19870 (amended). Grant or denial of license	12
Bus. & Prof. Code § 21701.1 (amended). Transport of storage containers	13
Bus. & Prof. Code § 25658.4 (amended). Professional competency examination.....	15
CIVIL CODE	17
Civ. Code § 916 (amended). Inspection and testing	17
Civ. Code § 922 (amended). Recording of repair	18
Civ. Code § 1799.3 (amended). Disclosure of personal information	18
Civ. Code § 3344.1 (amended). Use of deceased personality’s likeness	19
CODE OF CIVIL PROCEDURE.....	22
Code Civ. Proc. § 129 (amended). Reproduction of image of deceased person.....	22
Code Civ. Proc. § 1033.5 (amended). Allowable costs.....	23
Code Civ. Proc. § 2025.560 (amended). Recording of deposition testimony.....	25
EDUCATION CODE.....	25
Educ. Code § 8971 (amended). Definitions	25
Educ. Code § 17002 (amended). Definitions	26
Educ. Code § 18032 (amended). Library policy regarding video recordings.....	29
Educ. Code § 19323 (amended). Loan of audio recordings	30
Educ. Code § 32255 (amended). Definitions	30
Educ. Code § 49091.10 (amended). Parental right of inspection	31
Educ. Code § 52740 (amended). Instructional material relating to certain important historical events.....	31
Educ. Code § 52742 (amended). Review of films and video recordings.....	32
Educ. Code § 52743 (amended). Availability of films and video recordings.....	32
Educ. Code § 56341.1 (amended). Individualized education programs.....	32
Educ. Code § 60204 (amended). Duties of commission	34
ELECTION CODE.....	35
Elec. Code § 2052 (amended). Visually impaired individuals.....	35
Elec. Code § 2053 (amended). Visually Impaired Voter Assistance Advisory Board.....	35
Elec. Code § 9082.5 (amended). Audio recording of state ballot pamphlet	36
Elec. Code § 18541 (amended). Dissuading voters	36
EVIDENCE CODE.....	37
Evid. Code § 795 (amended). Professional competency examination	37
Evid. Code § 1118 (amended). Oral agreement.....	38
Evid. Code § 1294 (amended). Prior inconsistent statement	38

FAMILY CODE.....	39
Fam. Code § 3170 (amended). Custody or visitation issues	39
Fam. Code § 7572 (amended). Written informational material.....	39
Fam. Code § 10005 (amended). Additional duties of family law facilitator	40
Fam. Code § 20034 (amended). Duties of Attorney-Mediator	41
GOVERNMENT CODE.....	42
Gov't Code § 8880.30 (amended). Regulations for determining lottery winners	42
Gov't Code § 11124.1 (amended). Recording of public meeting.....	43
Gov't Code § 11130 (amended). Action to stop or prevent violation of meeting provision	43
Gov't Code § 12811.3 (amended). Employee transfer	45
Gov't Code § 14999.31 (amended). Permit to engage in film production.....	46
Gov't Code § 26202.6 (amended). Recordings of video monitoring and telephone and radio communications.....	46
Gov't Code § 26206.7 (amended). Destruction of duplicates of county records	47
Gov't Code § 26206.8 (amended). Transit agency security systems	47
Gov't Code § 27491.47 (amended). Removal of corneal eye tissue	48
Gov't Code § 34090.6 (amended). Destruction by department of recordings of routine video monitoring and telephone and radio communications	49
Gov't Code § 34090.7 (amended). Destruction by legislative body of recordings of routine video monitoring and telephone and radio communications.....	50
Gov't Code § 34090.8 (amended). Transit agency security systems	50
Gov't Code § 50028 (amended). Coin-operated viewing machines.....	51
Gov't Code § 53160 (amended). Destruction of recordings of routine video monitoring and telephone and radio communications.....	52
Gov't Code § 53161 (amended). Destruction by legislative body of recordings of routine video monitoring and telephone and radio communications.....	53
Gov't Code § 53162 (amended). Transit agency security systems.....	53
Gov't Code § 54953.5 (amended). Recording of public meeting.....	54
Gov't Code § 54960 (amended). Action to stop or prevent violation of meeting provision	55
Gov't Code § 68151 (amended). Definitions	56
HEALTH AND SAFETY CODE	57
Health & Safety Code § 1569.69 (amended). Training of employees.....	57
Health & Safety Code § 1736.5 (amended). Grounds for denial of application or certificate.....	60
Health & Safety Code § 7150.5 (amended). Anatomical gift.....	63
Health & Safety Code § 7151.5 (amended). Removal of body part from decedent.....	65
Health & Safety Code § 7158.3 (amended). Duties of donee of anatomical gift	67
Health & Safety Code § 13220 (amended). Furnishing emergency procedures to persons entering buildings.....	68
Health & Safety Code § 13221 (amended). Regulations for furnishing emergency procedures.....	69
Health & Safety Code § 25201.11 (amended). Departmental copyright protection and other rights.....	70
Health & Safety Code § 40828 (amended). Testimony by members of public	70
Health & Safety Code § 100171 (amended). Adjudicative hearing	70
Health & Safety Code § 127240 (amended). Informal public hearing.....	73
INSURANCE CODE	74
Ins. Code § 1758.97 (amended). Prerequisites to sale or offer to sell insurance	74
Ins. Code § 2071.1 (amended). Examination of insured	75
PENAL CODE	77
Penal Code § 298.1 (amended). Refusal to give specimen, sample or impression	77
Penal Code § 599aa (amended). Seizure of birds, animals and related items.....	78

Penal Code § 868.7 (amended). Closure of examination	80
Penal Code § 1191.15 (amended). Victim statement	81
Penal Code § 1203.098. (amended). Batterers' intervention program facilitators	82
Penal Code § 1346 (amended). Recording of testimony of minor or developmentally disabled victim	84
Penal Code § 1346.1 (amended). Recording of testimony of victim of spousal rape or infliction of corporal injury	85
Penal Code § 1347 (amended). Testimony of minors	85
Penal Code § 1347.5 (amended). Testimony of disabled victims.....	88
Penal Code § 3043 (amended). Hearing relating to parole suitability or setting of parole date	93
PUBLIC RESOURCES CODE.....	94
Pub. Res. Code § 4423.1 (amended). Suspension, restriction, or prohibition of permit burning	94
REVENUE AND TAXATION CODE.....	95
Rev. & Tax Code § 1611 (amended). Record of hearing	95
WELFARE AND INSTITUTIONS CODE.....	95
Welf. & Inst. Code § 19639 (amended). Rules and regulations	95

PROPOSED LEGISLATION

BUSINESS AND PROFESSIONS CODE

1
2 **Bus. & Prof. Code § 2293 (amended). Professional competency examination**

3 SECTION 1. Section 2293 of the Business and Professions Code is amended to
4 read:

5 2293. (a) The professional competency examination shall be in the form of an
6 oral clinical examination to be administered by three physician examiners selected
7 by the division or its designee, who shall test for medical knowledge specific to
8 the physician's specialty or specific suspected deficiency. The examination shall
9 be ~~tape~~ audio recorded.

10 (b) A failing grade from two of the examiners shall constitute a failure of an
11 examination. In the event of a failure, the board shall supply a true and correct
12 copy of ~~a tape~~ the audio recording of the examination to the unsuccessful
13 examinee.

14 (c) Within 45 days following receipt of the ~~tape~~ audio recording of the
15 examination, a physician who fails the examination may request a hearing before
16 the administrative law judge as designated in Section 11371 of the Government
17 Code to determine whether he or she is entitled to take a second examination.

18 (d) If the physician timely requests a hearing concerning the right to
19 reexamination under subdivision (c), the hearing shall be held in accordance with
20 the Administrative Procedure Act. Upon a finding that the examination or
21 procedure is unfair or that one or more of the examiners manifest bias towards the
22 examinee, a reexamination shall be ordered.

23 (e) If the examinee fails the examination and is not afforded the right to
24 reexamination, the division may take action pursuant to Section 2230 by directing
25 that an accusation be filed charging the examinee with incompetency under
26 subdivision (d) of Section 2234. The modes of discipline are set forth in Sections
27 2227 and 2228.

28 (f) Findings and conclusions reported by the examiners may be received in the
29 administrative hearing on the accusation. The passing of the examination shall
30 constitute prima facie evidence of present competence in the area of coverage of
31 the examination.

32 (g) Competency examinations shall be conducted under a uniform examination
33 system, and for that purpose the division may make arrangements with
34 organizations furnishing examination material as deemed desirable.

35 **Comment.** Section 2293 is amended to reflect advances in recording technology and for
36 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
37 numerous references to "audiotape" in Civil Discovery Act with either "audio technology,"
38 "audio recording," or "audio record," as context required).

1 **Bus. & Prof. Code § 3635 (amended). Continuing education**

2 SEC. _____. Section 3635 of the Business and Professions Code is amended to
3 read:

4 3635. (a) In addition to any other qualifications and requirements for licensure
5 renewal, the bureau shall require the satisfactory completion of 60 hours of
6 approved continuing education biennially. This requirement is waived for the
7 initial license renewal. The continuing education shall meet the following
8 requirements:

9 (1) At least 20 hours shall be in pharmacotherapeutics.

10 (2) No more than 15 hours may be in naturopathic medical journals or
11 osteopathic or allopathic medical journals, or audio or ~~videotaped~~ video recorded
12 presentations, slides, programmed instruction, or computer-assisted instruction or
13 preceptorships.

14 (3) No more than 20 hours may be in any single topic.

15 (4) No more than 15 hours of the continuing education requirements for the
16 specialty certificate in naturopathic childbirth attendance shall apply to the 60
17 hours of continuing education requirement.

18 (b) The continuing education requirements of this section may be met through
19 continuing education courses approved by the California Naturopathic Doctors
20 Association, the American Association of Naturopathic Physicians, the Medical
21 Board of California, the California State Board of Pharmacy, the State Board of
22 Chiropractic Examiners, or other courses approved by the bureau.

23 **Comment.** Subdivision (a)(2) of Section 3635 is amended to reflect advances in recording
24 technology and for consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068
25 (replacing numerous references to “audiotape” in Civil Discovery Act with either “audio
26 technology,” “audio recording,” or “audio record,” as context required).

27 **Bus. & Prof. Code § 4846.5 (amended). Continuing education**

28 SEC. _____. Section 4846.5 of the Business and Professions Code is amended to
29 read:

30 4846.5. (a) On or after January 1, 2002, except as provided in this section, the
31 board shall issue renewal licenses only to those applicants that have completed a
32 minimum of 36 hours of continuing education in the preceding two years.

33 (b)(1) Notwithstanding any other provision of law, continuing education hours
34 shall be earned by attending courses relevant to veterinary medicine and sponsored
35 or cosponsored by any of the following:

36 (A) American Veterinary Medical Association (AVMA) accredited veterinary
37 medical colleges.

38 (B) Accredited colleges or universities offering programs relevant to veterinary
39 medicine.

40 (C) The American Veterinary Medical Association.

41 (D) American Veterinary Medical Association recognized specialty or affiliated
42 allied groups.

1 (E) American Veterinary Medical Association's affiliated state veterinary
2 medical associations.

3 (F) Nonprofit annual conferences established in conjunction with state
4 veterinary medical associations.

5 (G) Educational organizations affiliated with the American Veterinary Medical
6 Association or its state affiliated veterinary medical associations.

7 (H) Local veterinary medical associations affiliated with the California
8 Veterinary Medical Association.

9 (I) Federal, state, or local government agencies.

10 (J) Providers accredited by the Accreditation Council for Continuing Medical
11 Education (ACCME) or approved by the American Medical Association (AMA),
12 providers recognized by the American Dental Association Continuing Education
13 Recognition Program (ADA CERP), and AMA or ADA affiliated state, local, and
14 specialty organizations.

15 (2) Continuing education credits shall be granted to those veterinarians taking
16 self-study courses, which may include, but are not limited to, reading journals,
17 viewing of ~~videotapes~~ video recordings, or listening to ~~audiotapes~~ audio
18 recordings. The taking of these courses shall be limited to no more than six hours
19 biennially.

20 (3) The board may approve other continuing veterinary medical education
21 providers not specified in paragraph (1).

22 (A) The board has the authority to recognize national continuing education
23 approval bodies for the purpose of approving continuing education providers not
24 specified in paragraph (1).

25 (B) Applicants seeking continuing education provider approval shall have the
26 option of applying to the board or to a board-recognized national approval body.

27 (4) For good cause, the board may adopt an order specifying, on a prospective
28 basis, that a provider of continuing veterinary medical education authorized
29 pursuant to ~~paragraphs (1) or (2)~~ paragraph (1) or (3) is no longer an acceptable
30 provider.

31 (5) Continuing education hours earned by attending courses sponsored or
32 cosponsored by those entities listed in paragraph (1) between January 1, 2000, and
33 the effective date of this act shall be credited toward a veterinarian's continuing
34 education requirement under this section.

35 (c) Every person renewing his or her license issued pursuant to Section 4846.4
36 or any person applying for relicensure or for reinstatement of his or her license to
37 active status, shall submit proof of compliance with this section to the board
38 certifying that he or she is in compliance with this section. Any false statement
39 submitted pursuant to this section shall be a violation subject to Section 4831.

40 (d) This section shall not apply to a veterinarian's first license renewal. This
41 section shall apply only to second and subsequent license renewals granted on or
42 after January 1, 2002.

1 (e) The board shall have the right to audit the records of all applicants to verify
2 the completion of the continuing education requirement. Applicants shall maintain
3 records of completion of required continuing education coursework for a period of
4 four years and shall make these records available to the board for auditing
5 purposes upon request. If the board, during this audit, questions whether any
6 course reported by the veterinarian satisfies the continuing education requirement,
7 the veterinarian shall provide information to the board concerning the content of
8 the course; the name of its sponsor and cosponsor, if any; and specify the specific
9 curricula that was of benefit to the veterinarian.

10 (f) A veterinarian desiring an inactive license or to restore an inactive license
11 under Section 701, shall submit an application on a form provided by the board. In
12 order to restore an inactive license to active status, the veterinarian shall have
13 completed a minimum of 36 hours of continuing education within the last two
14 years preceding application. The inactive license status of a veterinarian shall not
15 deprive the board of its authority to institute or continue a disciplinary action
16 against a licensee.

17 (g) Knowing misrepresentation of compliance with the requirements of this
18 article by a veterinarian constitutes unprofessional conduct and grounds for
19 disciplinary action or for the issuance of a citation and the imposition of a civil
20 penalty pursuant to Section 4883.

21 (h) The board, in its discretion, may exempt from the continuing education
22 requirement, any veterinarian who for reasons of health, military service, or undue
23 hardship, cannot meet those requirements. Applications for waivers shall be
24 submitted on a form provided by the board.

25 (i) The administration of this section may be funded through professional license
26 and continuing education provider fees. The fees related to the administration of
27 this section shall not exceed the costs of administering the corresponding
28 provisions of this section.

29 (j) For those continuing education providers not listed in paragraph (1) of
30 subdivision (b), the board or its recognized national approval agent shall establish
31 criteria by which a provider of continuing education shall be approved. The board
32 shall initially review and approve these criteria and may review the criteria as
33 needed. The board or its recognized agent shall monitor, maintain, and manage
34 related records and data. The board shall have the authority to impose an
35 application fee, not to exceed two hundred dollars (\$200) biennially, for
36 continuing education providers not listed in paragraph (1) of subdivision (b).

37 **Comment.** Subdivision (b)(2) of Section 4846.5 is amended to reflect advances in recording
38 technology and for consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068
39 (replacing numerous references to “audiotape” in Civil Discovery Act with either “audio
40 technology,” “audio recording,” or “audio record,” as context required).

41 Subdivision (b)(4) is amended to correct an erroneous cross-reference.

1 **Bus. & Prof. Code § 8027 (amended). Court reporting school requirements**

2 SEC. _____. Section 8027 of the Business and Professions Code is amended to
3 read:

4 8027. (a) As used in this section, “school” means a court reporter training
5 program or an institution that provides a course of instruction approved by the
6 board and the Bureau for Private Postsecondary and Vocational Education, is a
7 public school in this state, or is accredited by the Western Association of Schools
8 and Colleges.

9 (b) A court reporting school shall be primarily organized to train students for the
10 practice of shorthand reporting, as defined in Sections 8016 and 8017. Its
11 educational program shall be on the postsecondary or collegiate level. It shall be
12 legally organized and authorized to conduct its program under all applicable laws
13 of the state, and shall conform to and offer all components of the minimum
14 prescribed course of study established by the board. Its records shall be kept and
15 shall be maintained in a manner to render them safe from theft, fire, or other loss.
16 The records shall indicate positive daily and clock-hour attendance of each student
17 for all classes, apprenticeship and graduation reports, high school transcripts or the
18 equivalent or self-certification of high school graduation or the equivalent,
19 transcripts of other education, and student progress to date, including all progress
20 and counseling reports.

21 (c) Any school intending to offer a program in court reporting shall notify the
22 board within 30 days of the date on which it provides notice to, or seeks approval
23 from, the California Department of Education, the Bureau for Private
24 Postsecondary and Vocational Education, the Chancellor’s Office of the California
25 Community Colleges, or the Western Association of Schools and Colleges,
26 whichever is applicable. The board shall review the proposed curriculum and
27 provide the school tentative approval, or notice of denial, within 60 days of receipt
28 of the notice. The school shall apply for provisional recognition pursuant to
29 subdivision (d) within no more than one year from the date it begins offering court
30 reporting classes.

31 (d) The board may grant provisional recognition to a new court reporting school
32 upon satisfactory evidence that it has met all of the provisions of subdivision (b)
33 and this subdivision. Recognition may be granted by the board to a provisionally
34 recognized school after it has been in continuous operation for a period of no less
35 than three consecutive years from the date provisional recognition was granted,
36 during which period the school shall provide satisfactory evidence that at least one
37 person has successfully completed the entire course of study established by the
38 board and complied with the provisions of Section 8020, and has been issued a
39 certificate to practice shorthand reporting as defined in Sections 8016 and 8017.
40 The board may, for good cause shown, extend the three-year provisional
41 recognition period for not more than one year. Failure to meet the provisions and
42 terms of this section shall require the board to deny recognition. Once granted,

1 recognition may be withdrawn by the board for failure to comply with all
2 applicable laws and regulations.

3 (e) Application for recognition of a court reporting school shall be made upon a
4 form prescribed by the board and shall be accompanied by all evidence,
5 statements, or documents requested. Each branch, extension center, or off-campus
6 facility requires separate application.

7 (f) All recognized and provisionally recognized court reporting schools shall
8 notify the board of any change in school name, address, telephone number,
9 responsible court reporting program manager, owner of private schools, and the
10 effective date thereof, within 30 days of the change. All of these notifications shall
11 be made in writing.

12 (g) A school shall notify the board in writing immediately of the discontinuance
13 or pending discontinuance of its court reporting program or any of the program's
14 components. Within two years of the date this notice is sent to the board, the
15 school shall discontinue its court reporting program in its entirety. The board may,
16 for good cause shown, grant not more than two one-year extensions of this period
17 to a school. If a student is to be enrolled after this notice is sent to the board, a
18 school shall disclose to the student the fact of the discontinuance or pending
19 discontinuance of its court reporting program or any of its program components.

20 (h) The board shall maintain a roster of currently recognized and provisionally
21 recognized court reporting schools, including, but not limited to, the name,
22 address, telephone number, and the name of the responsible court reporting
23 program manager of each school.

24 (i) The board shall maintain statistics that display the number and passing
25 percentage of all first-time examinees, including, but not limited to, those qualified
26 by each recognized or provisionally recognized school and those first-time
27 examinees qualified by other methods as defined in Section 8020.

28 (j) Inspections and investigations shall be conducted by the board as necessary
29 to carry out this section, including, but not limited to, unannounced site visits.

30 (k) All recognized and provisionally recognized schools shall print in their
31 school or course catalog the name, address, and telephone number of the board. At
32 a minimum, the information shall be in 8-point bold type and include the
33 following statement:

34 "IN ORDER FOR A PERSON TO QUALIFY FROM A SCHOOL TO TAKE
35 THE STATE LICENSING EXAMINATION, THE PERSON SHALL
36 COMPLETE A PROGRAM AT A RECOGNIZED SCHOOL. FOR
37 INFORMATION CONCERNING THE MINIMUM REQUIREMENTS THAT A
38 COURT REPORTING PROGRAM MUST MEET IN ORDER TO BE
39 RECOGNIZED, CONTACT: THE COURT REPORTERS BOARD OF
40 CALIFORNIA; (ADDRESS); (TELEPHONE NUMBER)."

41 (l) Each court reporting school shall file with the board, not later than June 30 of
42 each year, a current school catalog that shows all course offerings and staff, and
43 for private schools, the owner, except that where there have been no changes to the

1 catalog within the previous year, no catalog need be sent. In addition, each school
2 shall also file with the board a statement certifying whether the school is in
3 compliance with all statutes and the rules and regulations of the board, signed by
4 the responsible court reporting program manager.

5 (m) A school offering court reporting may not make any written or verbal claims
6 of employment opportunities or potential earnings unless those claims are based
7 on verified data and reflect current employment conditions.

8 (n) If a school offers a course of instruction that exceeds the board's minimum
9 requirements, the school shall disclose orally and in writing the board's minimum
10 requirements and how the course of instruction differs from those criteria. The
11 school shall make this disclosure before a prospective student executes an
12 agreement obligating that person to pay any money to the school for the course of
13 instruction. The school shall also make this disclosure to all students enrolled on
14 January 1, 2002.

15 (o) Private and public schools shall provide each prospective student with all of
16 the following and have the prospective student sign a document that shall become
17 part of that individual's permanent record, acknowledging receipt of each item:

18 (1) A student consumer information brochure published by the board.

19 (2) A list of the school's graduation requirements, including the number of tests,
20 the pass point of each test, the speed of each test, and the type of test, such as jury
21 charge or literary.

22 (3) A list of requirements to qualify for the state certified shorthand reporter
23 licensing examination, including the number of tests, the pass point of each test,
24 the speed of each test, and the type of test, such as jury charge or literary, if
25 different than those requirements listed in paragraph (2).

26 (4) A copy of the school's board-approved benchmarks for satisfactory progress
27 as identified in subdivision (u).

28 (5) A report showing the number of students from the school who qualified for
29 each of the certified shorthand reporter licensing examinations within the
30 preceding two years, the number of those students that passed each examination,
31 the time, as of the date of qualification, that each student was enrolled in court
32 reporting school, and the placement rate for all students that passed each
33 examination.

34 (6) On and after January 1, 2005, the school shall also provide to prospective
35 students the number of hours each currently enrolled student who has qualified to
36 take the next licensing test, exclusive of transfer students, has attended court
37 reporting classes.

38 (p) All enrolled students shall have the information in subdivisions (n) and (o)
39 on file no later than June 30, 2005.

40 (q) Public schools shall provide the information in subdivisions (n) and (o) to
41 each new student the first day he or she attends theory or machine speed class, if it
42 was not provided previously.

1 (r) Each enrolled student shall be provided written notification of any change in
2 qualification or graduation requirements that is being implemented due to the
3 requirements of any one of the school's oversight agencies. This notice shall be
4 provided to each affected student at least 30 days before the effective date of the
5 change and shall state the new requirement and the name, address, and telephone
6 number of the agency that is requiring it of the school. Each student shall initial
7 and date a document acknowledging receipt of that information and that
8 document, or a copy thereof, shall be made part of the student's permanent file.

9 (s) Schools shall make available a comprehensive final examination in each
10 academic subject to any student desiring to challenge an academic class in order to
11 obtain credit towards certification for the state licensing examination. The points
12 required to pass a challenge examination shall not be higher than the minimum
13 points required of other students completing the academic class.

14 (t) An individual serving as a teacher, instructor, or reader shall meet the
15 qualifications specified by regulation for his or her position.

16 (u) Each school shall provide a substitute teacher or instructor for any class for
17 which the teacher or instructor is absent for two consecutive days or more.

18 (v) The board has the authority to approve or disapprove benchmarks for
19 satisfactory progress which each school shall develop for its court reporting
20 program. Schools shall use only board-approved benchmarks to comply with the
21 provisions of paragraph (4) of subdivision (o) and subdivision (u).

22 (w) Each school shall counsel each student a minimum of one time within each
23 12-month period to identify the level of attendance and progress, and the
24 prognosis for completing the requirements to become eligible to sit for the state
25 licensing examination. If the student has not progressed in accordance with the
26 board-approved benchmarks for that school, the student shall be counseled a
27 minimum of one additional time within that same 12-month period.

28 (x) The school shall provide to the board, for each student qualifying through the
29 school as eligible to sit for the state licensing examination, the number of hours
30 the student attended court reporting classes, both academic and machine speed
31 classes, including theory.

32 (y) The pass rate of first-time exam takers for each school offering court
33 reporting shall meet or exceed the average pass rate of all first-time test takers for
34 a majority of examinations given for the preceding three years. Failure to do so
35 shall require the board to conduct a review of the program. In addition, the board
36 may place the school on probation and may withdraw recognition if the school
37 continues to place below the above described standard on the two exams that
38 follow the three-year period.

39 (z) A school shall not require more than one 10-minute qualifying examination,
40 as defined in the regulations of the board, for a student to be eligible to sit for the
41 state certification examination.

42 (aa) A school shall provide the board the actual number of hours of attendance
43 for each applicant the school qualifies for the state licensing examination.

1 (bb) The board shall, by December 1, 2001, do the following by regulation as
2 necessary:

3 (1) Establish the format that shall be used by schools to report tracking of all
4 attendance hours and actual timeframes for completed coursework.

5 (2) Require schools to provide a minimum of 10 hours of live dictation class
6 each school week for every full-time student.

7 (3) Require schools to provide students with the opportunity to read back from
8 their stenographic notes a minimum of one time each day to his or her instructor.

9 (4) Require schools to provide students with the opportunity to practice with a
10 school-approved speed-building ~~tape~~ audio recording, or other assigned material, a
11 minimum of one hour per day after school hours as a homework assignment and
12 provide the notes from this ~~tape~~ audio recording to their instructor the following
13 day for review.

14 (5) Develop standardization of policies on the use and administration of qualifier
15 examinations by schools.

16 (6) Define qualifier exam as follows: the qualifier exam shall consist of 4-voice
17 testimony of 10-minute duration at 200 wpm, graded at 97.5 percent accuracy, and
18 in accordance with the guidelines followed by the board. Schools shall be required
19 to date and number each qualifier and announce the date and number to the
20 students at the time of administering the qualifier. All qualifiers shall indicate the
21 actual dictation time of the test and the school shall catalog and maintain the
22 qualifier for a period of not less than three years for the purpose of inspection by
23 the board.

24 (7) Require schools to develop a program to provide students with the
25 opportunity to interact with professional court reporters to provide skill support,
26 mentoring, or counseling which they can document at least quarterly.

27 (8) Define qualifications and educational requirements required of instructors
28 and readers that read test material and qualifiers.

29 (cc) The board shall adopt regulations to implement the requirements of this
30 section not later than September 1, 2002.

31 (dd) The board may recover costs for any additional expenses incurred under the
32 enactment amending this section in the 2001-02 Regular Session of the Legislature
33 pursuant to its fee authority in Section 8031.

34 **Comment.** Subdivision (bb)(4) of Section 8027 is amended to reflect advances in recording
35 technology and for consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068
36 (replacing numerous references to “audiotape” in Civil Discovery Act with either “audio
37 technology,” “audio recording,” or “audio record,” as context required).

38 **Bus. & Prof. Code § 17539.55 (amended). Sweepstakes using 900 numbers**

39 SEC. _____. Section 17539.55 of the Business and Professions Code is amended
40 to read:

41 17539.55. (a) It shall be unlawful to operate a sweepstakes in this state through
42 the use of a 900 number, unless the information provider registers with the

1 Department of Justice as provided in this section within 10 days after causing any
2 advertisement for the sweepstakes to be directed to any person in this state.

3 (b) The registration shall include the following information:

4 (1) Each 900 number to be used in the sweepstakes.

5 (2) The name and address of the information provider including corporate
6 identity, if any, and the name and address for the information provider's agent for
7 service of process within the state.

8 (3) A copy of the information provider's audio text, prerecorded, or live operator
9 scripts.

10 (4) A copy of the official rules for the sweepstakes.

11 (5) For television, video, or any on-screen advertisements, a copy of the
12 storyboard and ~~videotape~~ video recording.

13 (6) For radio advertisements, a copy of the script and audio ~~cassette~~ recording.

14 (7) For print or electronic form transmitted over the Internet, a copy of all
15 advertisements.

16 (8) For direct mail solicitations, a copy of all principal solicitations.

17 (9) For telephone solicitations, a copy of the script.

18 (10) The names of the carriers which the information provider plans to utilize to
19 carry the 900 number calls.

20 (c) The information provider shall pay an annual registration fee of fifty dollars
21 (\$50) for each 900 number used for sweepstakes purposes.

22 (d) It shall be unlawful for any information provider that operates a sweepstakes
23 to make reference, in any contact with the public, to the fact that the information
24 provider is registered with the Department of Justice, as required by this section,
25 or in any other manner imply that such registration represents approval of the
26 sweepstakes by the Department of Justice.

27 **Comment.** Section 17539.55 is amended to reflect advances in recording technology and for
28 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
29 numerous references to "audiotape" in Civil Discovery Act with either "audio technology,"
30 "audio recording," or "audio record," as context required).

31 **Bus. & Prof. Code § 19513 (amended). Examinations**

32 SEC. _____. Section 19513 of the Business and Professions Code is amended to
33 read:

34 19513. (a) The board shall prepare both written and oral examinations. All
35 examinations shall be standardized and, in the case of oral examinations, ~~tape~~
36 audio recorded. Written examinations may be administered by members of the
37 board staff. Oral examinations shall be conducted by a panel of not less than three
38 board members.

39 (b) The board shall provide a detailed outline of the subjects to be covered by
40 the oral and written examinations for a license to every person who requests the
41 outline.

1 (c) The results of the oral and written examinations for stewards licenses shall
2 be a public record.

3 **Comment.** Section 19513 is amended to reflect advances in recording technology and for
4 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
5 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”
6 “audio recording,” or “audio record,” as context required).

7 **Bus. & Prof. Code § 19576 (amended). Recording of race for commercial purpose**

8 SEC. _____. Section 19576 of the Business and Professions Code is amended to
9 read:

10 19576. (a) No person may furnish ~~a tape~~ an audio or video recording of any
11 quarter horse race occurring in this state to any other person either within or
12 outside of the state for any commercial purpose, including the use of the ~~tape~~
13 recording in any type of video game, without first securing the consent of the
14 racing association conducting the meeting, the organization representing horsemen
15 participating in the meeting, and the board.

16 (b) No person may use any ~~tape~~ audio or video recording of any quarter horse
17 race occurring in this state for any commercial purpose without first securing the
18 consent of the racing association holding the meeting, the organization
19 representing horsemen participating in the meeting, and the board.

20 (c) Any person whose consent is required under this section may file and
21 maintain an action in superior court to obtain an injunction against the furnishing
22 or commercial use of a recording of a quarter horse race ~~tape~~ in violation of this
23 section.

24 **Comment.** Section 19576 is amended to reflect advances in recording technology and for
25 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
26 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”
27 “audio recording,” or “audio record,” as context required).

28 **Bus. & Prof. Code § 19861 (amended). Licensing of gambling establishment**

29 SEC. _____. Section 19861 of the Business and Professions Code is amended to
30 read:

31 19861. Notwithstanding subdivision (i) of Section 19801, the commission shall
32 not deny a license to a gambling establishment solely because it is not open to the
33 public, provided that all of the following are true: (a) the gambling establishment
34 is situated in a local jurisdiction that has an ordinance allowing only private clubs,
35 and the gambling establishment was in operation as a private club under that
36 ordinance on December 31, 1997, and met all applicable state and local gaming
37 registration requirements; (b) the gambling establishment consists of no more than
38 five gaming tables; (c) ~~videotaped~~ video recordings of the entrance to the
39 gambling room or rooms and all tables situated therein are made during all hours
40 of operation by means of closed circuit television cameras, and these ~~tapes~~
41 recordings are retained for a period of 30 days and are made available for review
42 by the department or commission upon request; and (d) the gambling

1 establishment is open to members of the private club and their spouses in
2 accordance with membership criteria in effect as of December 31, 1997.

3 A gambling establishment meeting these criteria, in addition to the other
4 requirements of this chapter, may be licensed to operate as a private club gambling
5 establishment until November 30, 2003, or until the ownership or operation of the
6 gambling establishment changes from the ownership or operation as of January 1,
7 1998, whichever occurs first. Operation of the gambling establishments after this
8 date shall only be permitted if the local jurisdiction approves an ordinance,
9 pursuant to Sections 19961 and 19962, authorizing the operation of gambling
10 establishments that are open to the public. The commission shall adopt regulations
11 implementing this section. Prior to the commission's issuance of a license to a
12 private club, the department shall ensure that the ownership of the gambling
13 establishment has remained constant since January 1, 1998, and the operation of
14 the gambling establishment has not been leased to any third party.

15 **Comment.** Section 19861 is amended to reflect advances in recording technology and for
16 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
17 numerous references to "audiotape" in Civil Discovery Act with either "audio technology,"
18 "audio recording," or "audio record," as context required).

19 **Bus. & Prof. Code § 19870 (amended). Grant or denial of license**

20 SEC. _____. Section 19870 of the Business and Professions Code is amended to
21 read:

22 19870. (a) The commission, after considering the recommendation of the chief
23 and any other testimony and written comments as may be presented at the
24 meeting, or as may have been submitted in writing to the commission prior to the
25 meeting, may either deny the application or grant a license to an applicant who it
26 determines to be qualified to hold the license.

27 (b) When the commission grants an application for a license or approval, the
28 commission may limit or place restrictions thereon as it may deem necessary in
29 the public interest, consistent with the policies described in this chapter.

30 (c) When an application is denied, the commission shall prepare and file a
31 detailed statement of its reasons for the denial.

32 (d) All proceedings at a meeting of the commission relating to a license
33 application shall be recorded stenographically or ~~on audiotape or videotape~~ by
34 audio or video recording.

35 (e) A decision of the commission denying a license or approval, or imposing any
36 condition or restriction on the grant of a license or approval may be reviewed by
37 petition pursuant to Section 1085 of the Code of Civil Procedure. Section 1094.5
38 of the Code of Civil Procedure shall not apply to any judicial proceeding described
39 in the foregoing sentence, and the court may grant the petition only if the court
40 finds that the action of the commission was arbitrary and capricious, or that the
41 action exceeded the commission's jurisdiction.

42 **Comment.** Section 19870 is amended to reflect advances in recording technology and for
43 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing

1 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”
2 “audio recording,” or “audio record,” as context required).

3 **Bus. & Prof. Code § 21701.1 (amended). Transport of storage containers**

4 SEC. _____. Section 21701.1 of the Business and Professions Code is amended
5 to read:

6 21701.1. (a) The owner or operator of a self-service storage facility or a
7 household goods carrier, may, for a fee, transport individual storage containers to
8 and from a self-service storage facility that he or she owns or operates. This
9 transportation activity, whether performed by an owner, operator, or carrier, shall
10 not be deemed transportation for compensation or hire as a business of used
11 household goods and is not subject to regulation under Chapter 7 (commencing
12 with Section 5101) of Division 2 of the Public Utilities Code, provided that all of
13 the following requirements are met:

14 (1) The fee charged (A) to deliver an empty individual storage container to a
15 customer and to transport the loaded container to a self-service storage facility or
16 (B) to return a loaded individual storage container from a self-service storage
17 facility to the customer does not exceed one hundred dollars (\$100).

18 (2) The owner, operator, or carrier, or any affiliate of the owner, operator, or
19 carrier, does not load, pack, or otherwise handle the contents of the container.

20 (3) The owner, operator, or carrier is registered under Chapter 2 (commencing
21 with Section 34620) of Division 14.85 of the Vehicle Code or holds a permit
22 under Chapter 7 (commencing with Section 5101) of Division 2 of the Public
23 Utilities Code.

24 (4) The owner, operator, or carrier has procured and maintained cargo insurance
25 in the amount of at least twenty thousand dollars (\$20,000) per shipment. Proof of
26 cargo insurance coverage shall be maintained on file and presented to the
27 Department of Motor Vehicles or Public Utilities Commission upon written
28 request.

29 (5) The owner, operator, or carrier shall disclose to the customer in advance the
30 following information regarding the container transfer service offered, in a written
31 document separate from others furnished at the time of disclosure:

32 (A) A detailed description of the transfer service, including a commitment to use
33 its best efforts to place the container in an appropriate location designated by the
34 customer.

35 (B) The dimensions and construction of the individual storage containers used.

36 (C) The unit charge, if any, for the container transfer service that is in addition
37 to the storage charge or any other fees under the rental agreement.

38 (D) The availability of delivery or pickup by the customer of his or her goods at
39 the self-service storage facility.

40 (E) The maximum allowable distance, measured from the self-service storage
41 facility, for the initial pickup and final delivery of the loaded container.

1 (F) The precise terms of the company’s right to move a container from the initial
2 storage location at its own discretion and a statement that the customer will not be
3 required to pay additional charges with respect to that transfer.

4 (G) Conspicuous disclosure in bold text of the allocation of responsibility for the
5 risk of loss or damage to the customer’s goods, including any disclaimer of the
6 company’s liability, and the procedure for presenting any claim regarding loss or
7 damage to the company.

8 The disclosure of terms and conditions required by this subdivision, and the
9 rental agreement, shall be received by the customer a minimum of 72 hours prior
10 to delivery of the empty individual storage container; however, the customer may,
11 in writing, knowingly and voluntarily waive that receipt. The company shall
12 record in writing, and retain for a period of at least six months after the end of the
13 rental, the time and method of delivery of the information, any waiver made by the
14 customer, and the times and dates of initial pickup and redelivery of the
15 containerized goods.

16 (6) No later than the time the empty individual storage container is delivered to
17 the customer, the company shall provide the customer with an informational
18 brochure containing the following information about loading the container:

19 (A) Packing and loading tips to minimize damage in transit.

20 (B) A suggestion that the customer make an inventory of the items as they are
21 loaded and keep any other record (for example, photographs or ~~videotape~~ video
22 recording) that may assist in any subsequent claims processing.

23 (C) A list of items that are impermissible to pack in the container (for example,
24 flammable items).

25 (D) A list of items that are not recommended to be packed in light of foreseeable
26 hazards inherent in the company’s handling of the containers and in light of any
27 limitation of liability contained in the rental agreement.

28 (b) Pickup and delivery of the individual storage containers shall be on a date
29 agreed upon between the customer and the company. If the company requires the
30 customer to be physically present at the time of pickup, the company shall in fact
31 be at the customer’s premises prepared to perform the service not more than four
32 hours later than the scheduled time agreed to by the customer and company, and in
33 the event of a preventable breach of that obligation by the company, the customer
34 shall be entitled to receive a penalty of fifty dollars (\$50) from the company and to
35 elect rescission of the rental agreement without liability.

36 (c) No charge shall be assessed with respect to any movement of the container
37 between self-service storage facilities by the company at its own discretion, nor
38 for the delivery of a container to a customer’s premises if the customer advises the
39 company, at least 24 hours before the agreed time of container dropoff, orally or in
40 writing, that he or she is rescinding the request for service.

41 (d) For purposes of this chapter, “individual storage container” means a
42 container that meets all of the following requirements:

43 (1) It shall be fully enclosed and locked.

1 (2) It contains not less than 100 and not more than 1,100 cubic feet.

2 (3) It is constructed out of a durable material appropriate for repeated use. A box
3 constructed out of cardboard or a similar material shall not constitute an individual
4 storage container for purposes of this section.

5 (e) Nothing in this section shall be construed to limit the authority of the Public
6 Utilities Commission to investigate and commence an appropriate enforcement
7 action pursuant to Chapter 7 (commencing with Section 5101) of Division 2 of the
8 Public Utilities Code against any person transporting household goods in
9 individual storage containers in a manner other than that described in this section.

10 **Comment.** Subdivision (a)(6)(B) of Section 21701.1 is amended to reflect advances in
11 recording technology and for consistency of terminology. For a similar reform, see 2002 Cal.
12 Stat. ch. 1068 (replacing numerous references to “audiotape” in Civil Discovery Act with either
13 “audio technology,” “audio recording,” or “audio record,” as context required).

14 **Bus. & Prof. Code § 25658.4 (amended). Professional competency examination**

15 SEC. _____. Section 25658.4 of the Business and Professions Code is amended
16 to read:

17 25658.4. (a) On and after January 1, 1992, no clerk shall make an off sale of
18 alcoholic beverages unless the clerk executes under penalty of perjury on the first
19 day he or she makes that sale an application and acknowledgment. The application
20 and acknowledgment shall be in a form understandable to the clerk.

21 (1) The department shall specify the form of the application and
22 acknowledgment which shall include at a minimum a summary of this division
23 pertaining to the following:

24 (A) The prohibitions contained in Sections 25658 and 25658.5 pertaining to the
25 sale to, and purchase of, alcoholic beverages by persons under 21 years of age.

26 (B) Bona fide evidence of majority as provided in Section 25660.

27 (C) Hours of operation as provided in Article 2 (commencing with Section
28 ~~25630~~ 25631) of Chapter 16.

29 (D) The prohibitions contained in subdivision (a) of Section 25602 and Section
30 25602.1 pertaining to sales to an intoxicated person.

31 (E) Sections 23393 and 23394 as they pertain to on-premises consumption of
32 alcoholic beverages in an off-sale premises.

33 (F) The requirements and prohibitions contained in Section 25659.5 pertaining
34 to sales of keg beer for consumption off licensed premises.

35 (2) The application and acknowledgment shall also include a statement that the
36 clerk has read and understands the summary, a statement that the clerk has never
37 been convicted of violating this division or, if convicted, an explanation of the
38 circumstances of each conviction, and a statement that the application and
39 acknowledgment is executed under penalty of perjury.

40 (3) The licensee shall keep the executed application and acknowledgment on the
41 premises at all times and available for inspection by the department. A licensee
42 with more than one licensed off-sale premises in the state may comply with this

1 subdivision by maintaining an executed application and acknowledgment at a
2 designated licensed premises, regional office, or headquarters office in the state.
3 An executed application and acknowledgment maintained at the designated
4 locations shall be valid for all licensed off-sale premises owned by the licensee.
5 Any licensee maintaining an application and acknowledgment at a designated site
6 other than the individual licensed off-sale premises shall notify the department in
7 advance and in writing of the site where the application and acknowledgment shall
8 be maintained and available for inspection. A licensee electing to maintain
9 application and acknowledgments at a designated site other than the licensed
10 premises shall maintain at each licensed premises a notice of where the executed
11 application and acknowledgments are located. Any licensee with more than one
12 licensed off-sale premises who elects to maintain the application and
13 acknowledgments at a designated site other than each licensed premises shall
14 provide the department, upon written demand, a copy of any employee's executed
15 application and acknowledgment within 10 business days. A violation of this
16 subdivision by a licensee constitutes grounds for discipline by the department.

17 (b) On and after January 1, 1992, the licensee shall post a notice that contains
18 and describes, in concise terms, prohibited sales of alcoholic beverages, a
19 statement that the off-sale seller will refuse to make a sale if the seller reasonably
20 suspects that the Alcoholic Beverage Control Act may be violated, and a statement
21 that a minor who purchases or attempts to purchase alcoholic beverages is subject
22 to suspension or delay in the issuance of his or her driver's license pursuant to
23 Section 13202.5 of the Vehicle Code. The notice shall be posted at an entrance or
24 at a point of sale in the licensed premises or in any other location that is visible to
25 purchasers of alcoholic beverages and to the off-sale seller.

26 (c) On and after January 1, 1998, a retail licensee shall post a notice that
27 contains and describes, in concise terms, the fines and penalties for any violation
28 of Section 25658, relating to the sale of alcoholic beverages to, or the purchase of
29 alcoholic beverages by, any person under the age of 21 years.

30 (d) Nonprofit organizations or licensees may obtain ~~videotapes~~ video recordings
31 and other training materials from the department on the Licensee Education on
32 Alcohol and Drugs (LEAD) program. The ~~videotapes~~ video recordings and
33 training materials may be updated periodically and may be provided in English
34 and other languages, and when made available by the department, shall be
35 provided at cost.

36 (e) As used in this section:

37 (1) "Off-sale seller" means any person holding a retail off-sale license issued by
38 the department and any person employed by that licensee who in the course of that
39 employment sells alcoholic beverages.

40 (2) "Clerk" means an off-sale seller who is not a licensee.

41 (f) The department may adopt rules and appropriate fees for licensees that it
42 determines necessary for the administration of this section.

1 any alleged unmet standard and to participate in the repair process. The claimant
2 and his or her legal representative, if any, shall be advised in a reasonable time
3 prior to the inspection as to the identity of all persons or entities invited to attend.
4 This subdivision does not apply to the builder's insurance company. Except with
5 respect to any claims involving a repair actually conducted under this chapter,
6 nothing in this subdivision shall be construed to relieve a subcontractor, design
7 professional, individual product manufacturer, or material supplier of any liability
8 under an action brought by a claimant.

9 **Comment.** Subdivision (a) of Section 916 is amended to reflect advances in recording
10 technology and for consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068
11 (replacing numerous references to "audiotape" in Civil Discovery Act with either "audio
12 technology," "audio recording," or "audio record," as context required).

13 **Civ. Code § 922 (amended). Recording of repair**

14 SEC. _____. Section 922 of the Civil Code is amended to read:

15 922. The builder shall, upon request, allow the repair to be observed and
16 ~~electronically recorded, videotaped,~~ video recorded or photographed by the
17 claimant or his or her legal representative. Nothing that occurs during the repair
18 process may be used or introduced as evidence to support a spoliation defense by
19 any potential party in any subsequent litigation.

20 **Comment.** Section 922 is amended to reflect advances in recording technology and for
21 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
22 numerous references to "audiotape" in Civil Discovery Act with either "audio technology,"
23 "audio recording," or "audio record," as context required).

24 **Civ. Code § 1799.3 (amended). Disclosure of personal information**

25 SEC. _____. Section 1799.3 of the Civil Code is amended to read:

26 1799.3. (a) No person providing video ~~cassette recording~~ recording sales or rental services
27 shall disclose any personal information or the contents of any record, including
28 sales or rental information, which is prepared or maintained by that person, to any
29 person, other than the individual who is the subject of the record, without the
30 written consent of that individual.

31 (b) This section does not apply to any of the following:

32 (1) To a disclosure to any person pursuant to a subpoena or court order.

33 (2) To a disclosure which is in response to the proper use of discovery in a
34 pending civil action.

35 (3) To a disclosure to any person acting pursuant to a lawful search warrant.

36 (4) To a disclosure to a law enforcement agency when required for
37 investigations of criminal activity, unless that disclosure is prohibited by law.

38 (5) To a disclosure to a taxing agency for purposes of tax administration.

39 (6) To a disclosure of names and addresses only for commercial purposes.

40 (c) Any willful violation of this section shall be subject to a civil penalty not to
41 exceed five hundred dollars (\$500) for each violation, which may be recovered in
42 a civil action brought by the person who is the subject of the records.

1 (d)(1) Any person who willfully violates this section on three or more occasions
2 in any six-month period shall, in addition, be subject to a civil penalty not to
3 exceed five hundred dollars (\$500) for each violation, which may be assessed and
4 recovered in a civil action brought in the name of the people of the State of
5 California by the Attorney General, by any district attorney or city attorney, or by
6 a city prosecutor in any city or city and county having a full-time city prosecutor,
7 in any court of competent jurisdiction.

8 (2) If the action is brought by the Attorney General, one-half of the penalty
9 collected shall be paid to the treasurer of the county in which the judgment was
10 entered, and one-half to the General Fund. If the action is brought by a district
11 attorney, the penalty collected shall be paid to the treasurer of the county in which
12 the judgment was entered. If the action is brought by a city attorney or city
13 prosecutor, one-half of the penalty shall be paid to the treasurer of the city in
14 which the judgment was entered, and one-half to the treasurer of the county in
15 which the judgment was entered.

16 (e) The penalty provided by this section is not an exclusive remedy, and does
17 not affect any other relief or remedy provided by law.

18 **Comment.** Subdivision (a) of Section 1799.3 is amended to reflect advances in recording
19 technology and for consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068
20 (replacing numerous references to “audiotape” in Civil Discovery Act with either “audio
21 technology,” “audio recording,” or “audio record,” as context required).

22 **Civ. Code § 3344.1 (amended). Use of deceased personality’s likeness**

23 SEC. _____. Section 3344.1 of the Civil Code is amended to read:

24 3344.1. (a)(1) Any person who uses a deceased personality’s name, voice,
25 signature, photograph, or likeness, in any manner, on or in products, merchandise,
26 or goods, or for purposes of advertising or selling, or soliciting purchases of,
27 products, merchandise, goods, or services, without prior consent from the person
28 or persons specified in subdivision (c), shall be liable for any damages sustained
29 by the person or persons injured as a result thereof. In addition, in any action
30 brought under this section, the person who violated the section shall be liable to
31 the injured party or parties in an amount equal to the greater of seven hundred fifty
32 dollars (\$750) or the actual damages suffered by the injured party or parties, as a
33 result of the unauthorized use, and any profits from the unauthorized use that are
34 attributable to the use and are not taken into account in computing the actual
35 damages. In establishing these profits, the injured party or parties shall be required
36 to present proof only of the gross revenue attributable to the use and the person
37 who violated the section is required to prove his or her deductible expenses.
38 Punitive damages may also be awarded to the injured party or parties. The
39 prevailing party or parties in any action under this section shall also be entitled to
40 attorneys’ fees and costs.

41 (2) For purposes of this subdivision, a play, book, magazine, newspaper, musical
42 composition, audiovisual work, radio or television program, single and original

1 work of art, work of political or newsworthy value, or an advertisement or
2 commercial announcement for any of these works, shall not be considered a
3 product, article of merchandise, good, or service if it is fictional or nonfictional
4 entertainment, or a dramatic, literary, or musical work.

5 (3) If a work that is protected under paragraph (2) includes within it a use in
6 connection with a product, article of merchandise, good, or service, this use shall
7 not be exempt under this subdivision, notwithstanding the unprotected use's
8 inclusion in a work otherwise exempt under this subdivision, if the claimant
9 proves that this use is so directly connected with a product, article of merchandise,
10 good, or service as to constitute an act of advertising, selling, or soliciting
11 purchases of that product, article of merchandise, good, or service by the deceased
12 personality without prior consent from the person or persons specified in
13 subdivision (c).

14 (b) The rights recognized under this section are property rights, freely
15 transferable, in whole or in part, by contract or by means of trust or testamentary
16 documents, whether the transfer occurs before the death of the deceased
17 personality, by the deceased personality or his or her transferees, or, after the death
18 of the deceased personality, by the person or persons in whom the rights vest
19 under this section or the transferees of that person or persons.

20 (c) The consent required by this section shall be exercisable by the person or
21 persons to whom the right of consent, or portion thereof, has been transferred in
22 accordance with subdivision (b), or if no transfer has occurred, then by the person
23 or persons to whom the right of consent, or portion thereof, has passed in
24 accordance with subdivision (d).

25 (d) Subject to subdivisions (b) and (c), after the death of any person, the rights
26 under this section shall belong to the following person or persons and may be
27 exercised, on behalf of and for the benefit of all of those persons, by those persons
28 who, in the aggregate, are entitled to more than a one-half interest in the rights:

29 (1) The entire interest in those rights belong to the surviving spouse of the
30 deceased personality unless there are any surviving children or grandchildren of
31 the deceased personality, in which case one-half of the entire interest in those
32 rights belong to the surviving spouse.

33 (2) The entire interest in those rights belong to the surviving children of the
34 deceased personality and to the surviving children of any dead child of the
35 deceased personality unless the deceased personality has a surviving spouse, in
36 which case the ownership of a one-half interest in rights is divided among the
37 surviving children and grandchildren.

38 (3) If there is no surviving spouse, and no surviving children or grandchildren,
39 then the entire interest in those rights belong to the surviving parent or parents of
40 the deceased personality.

41 (4) The rights of the deceased personality's children and grandchildren are in all
42 cases divided among them and exercisable in the manner provided in Section 240
43 of the Probate Code according to the number of the deceased personality's

1 children represented. The share of the children of a dead child of a deceased
2 personality can be exercised only by the action of a majority of them.

3 (e) If any deceased personality does not transfer his or her rights under this
4 section by contract, or by means of a trust or testamentary document, and there are
5 no surviving persons as described in subdivision (d), then the rights set forth in
6 subdivision (a) shall terminate.

7 (f)(1) A successor in interest to the rights of a deceased personality under this
8 section or a licensee thereof may not recover damages for a use prohibited by this
9 section that occurs before the successor in interest or licensee registers a claim of
10 the rights under paragraph (2).

11 (2) Any person claiming to be a successor in interest to the rights of a deceased
12 personality under this section or a licensee thereof may register that claim with the
13 Secretary of State on a form prescribed by the Secretary of State and upon
14 payment of a fee as set forth in subdivision (d) of Section 12195 of the
15 Government Code. The form shall be verified and shall include the name and date
16 of death of the deceased personality, the name and address of the claimant, the
17 basis of the claim, and the rights claimed.

18 (3) Upon receipt and after filing of any document under this section, the
19 Secretary of State shall post the document along with the entire registry of persons
20 claiming to be a successor in interest to the rights of a deceased personality or a
21 registered licensee under this section upon the World Wide Web, also known as
22 the Internet. The Secretary of State may microfilm or reproduce by other
23 techniques any of the filings or documents and destroy the original filing or
24 document. The microfilm or other reproduction of any document under the
25 provisions of this section shall be admissible in any court of law. The microfilm or
26 other reproduction of any document may be destroyed by the Secretary of State 70
27 years after the death of the personality named therein.

28 (4) Claims registered under this subdivision shall be public records.

29 (g) No action shall be brought under this section by reason of any use of a
30 deceased personality's name, voice, signature, photograph, or likeness occurring
31 after the expiration of 70 years after the death of the deceased personality.

32 (h) As used in this section, "deceased personality" means any natural person
33 whose name, voice, signature, photograph, or likeness has commercial value at the
34 time of his or her death, whether or not during the lifetime of that natural person
35 the person used his or her name, voice, signature, photograph, or likeness on or in
36 products, merchandise or goods, or for purposes of advertising or selling, or
37 solicitation of purchase of, products, merchandise, goods, or services. A "deceased
38 personality" shall include, without limitation, any such natural person who has
39 died within 70 years prior to January 1, 1985.

40 (i) As used in this section, "photograph" means any photograph or photographic
41 reproduction, still or moving, or any video ~~tape~~ recording or live television
42 transmission, of any person, such that the deceased personality is readily
43 identifiable. A deceased personality shall be deemed to be readily identifiable

1 from a photograph when one who views the photograph with the naked eye can
2 reasonably determine who the person depicted in the photograph is.

3 (j) For purposes of this section, a use of a name, voice, signature, photograph, or
4 likeness in connection with any news, public affairs, or sports broadcast or
5 account, or any political campaign, shall not constitute a use for which consent is
6 required under subdivision (a).

7 (k) The use of a name, voice, signature, photograph, or likeness in a commercial
8 medium shall not constitute a use for which consent is required under subdivision
9 (a) solely because the material containing the use is commercially sponsored or
10 contains paid advertising. Rather, it shall be a question of fact whether or not the
11 use of the deceased personality's name, voice, signature, photograph, or likeness
12 was so directly connected with the commercial sponsorship or with the paid
13 advertising as to constitute a use for which consent is required under subdivision
14 (a).

15 (l) Nothing in this section shall apply to the owners or employees of any
16 medium used for advertising, including, but not limited to, newspapers,
17 magazines, radio and television networks and stations, cable television systems,
18 billboards, and transit ads, by whom any advertisement or solicitation in violation
19 of this section is published or disseminated, unless it is established that the owners
20 or employees had knowledge of the unauthorized use of the deceased personality's
21 name, voice, signature, photograph, or likeness as prohibited by this section.

22 (m) The remedies provided for in this section are cumulative and shall be in
23 addition to any others provided for by law.

24 (n) This section shall apply to the adjudication of liability and the imposition of
25 any damages or other remedies in cases in which the liability, damages, and other
26 remedies arise from acts occurring directly in this state. For purposes of this
27 section, acts giving rise to liability shall be limited to the use, on or in products,
28 merchandise, goods, or services, or the advertising or selling, or soliciting
29 purchases of, products, merchandise, goods, or services prohibited by this section.

30 (o) This section shall be known and may be cited as the Astaire Celebrity Image
31 Protection Act.

32 **Comment.** Subdivision (i) of Section 3344.1 is amended to reflect advances in recording
33 technology and for consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068
34 (replacing numerous references to "audiotape" in Civil Discovery Act with either "audio
35 technology," "audio recording," or "audio record," as context required).

36 CODE OF CIVIL PROCEDURE

37 **Code Civ. Proc. § 129 (amended). Reproduction of image of deceased person**

38 SEC. _____. Section 129 of the Code of the Civil Procedure is amended to read:

39 129. Notwithstanding any other provision of law, no copy, reproduction, or
40 facsimile of any kind shall be made of any photograph, negative, or print,
41 including instant photographs and video ~~tapes~~ recordings, of the body, or any

1 portion of the body, of a deceased person, taken by or for the coroner at the scene
2 of death or in the course of a post mortem examination or autopsy made by or
3 caused to be made by the coroner, except for use in a criminal action or
4 proceeding in this state which relates to the death of that person, or except as a
5 court of this state permits, by order after good cause has been shown and after
6 written notification of the request for the court order has been served, at least five
7 days before the order is made, upon the district attorney of the county in which the
8 post mortem examination or autopsy has been made or caused to be made.

9 This section shall not apply to the making of such a copy, reproduction, or
10 facsimile for use in the field of forensic pathology, for use in medical, or scientific
11 education or research, or for use by any law enforcement agency in this or any
12 other state or the United States.

13 This section shall apply to any such copy, reproduction, or facsimile, and to any
14 such photograph, negative, or print, heretofore or hereafter made.

15 **Comment.** Section 129 is amended to reflect advances in recording technology and for
16 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
17 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”
18 “audio recording,” or “audio record,” as context required).

19 **Code Civ. Proc. § 1033.5 (amended). Allowable costs**

20 SEC. _____. Section 1033.5 of the Code of Civil Procedure is amended to read:

21 1033.5. (a) The following items are allowable as costs under Section 1032:

22 (1) Filing, motion, and jury fees.

23 (2) Juror food and lodging while they are kept together during trial and after the
24 jury retires for deliberation.

25 (3) Taking, ~~videotaping~~ video recording, and transcribing necessary depositions
26 including an original and one copy of those taken by the claimant and one copy of
27 depositions taken by the party against whom costs are allowed, and travel
28 expenses to attend depositions.

29 (4) Service of process by a public officer, registered process server, or other
30 means, as follows:

31 (A) When service is by a public officer, the recoverable cost is the fee
32 authorized by law at the time of service.

33 (B) If service is by a process server registered pursuant to Chapter 16
34 (commencing with Section 22350) of Division 8 of the Business and Professions
35 Code, the recoverable cost is the amount actually incurred in effecting service,
36 including, but not limited to, a stakeout or other means employed in locating the
37 person to be served, unless such charges are successfully challenged by a party to
38 the action.

39 (C) When service is by publication, the recoverable cost is the sum actually
40 incurred in effecting service.

41 (D) When service is by a means other than that set forth in subparagraph (A),
42 (B) or (C), the recoverable cost is the lesser of the sum actually incurred, or the

1 amount allowed to a public officer in this state for such service, except that the
2 court may allow the sum actually incurred in effecting service upon application
3 pursuant to paragraph (4) of subdivision (c).

4 (5) Expenses of attachment including keeper's fees.

5 (6) Premiums on necessary surety bonds.

6 (7) Ordinary witness fees pursuant to Section 68093 of the Government Code.

7 (8) Fees of expert witnesses ordered by the court.

8 (9) Transcripts of court proceedings ordered by the court.

9 (10) Attorney fees, when authorized by any of the following:

10 (A) Contract.

11 (B) Statute.

12 (C) Law.

13 (11) Court reporters fees as established by statute.

14 (12) Models and blowups of exhibits and photocopies of exhibits may be
15 allowed if they were reasonably helpful to aid the trier of fact.

16 (13) Any other item that is required to be awarded to the prevailing party
17 pursuant to statute as an incident to prevailing in the action at trial or on appeal.

18 (b) The following items are not allowable as costs, except when expressly
19 authorized by law:

20 (1) Fees of experts not ordered by the court.

21 (2) Investigation expenses in preparing the case for trial.

22 (3) Postage, telephone, and photocopying charges, except for exhibits.

23 (4) Costs in investigation of jurors or in preparation for voir dire.

24 (5) Transcripts of court proceedings not ordered by the court.

25 (c) Any award of costs shall be subject to the following:

26 (1) Costs are allowable if incurred, whether or not paid.

27 (2) Allowable costs shall be reasonably necessary to the conduct of the litigation
28 rather than merely convenient or beneficial to its preparation.

29 (3) Allowable costs shall be reasonable in amount.

30 (4) Items not mentioned in this section and items assessed upon application may
31 be allowed or denied in the court's discretion.

32 (5) When any statute of this state refers to the award of "costs and attorney's
33 fees," attorney's fees are an item and component of the costs to be awarded and
34 are allowable as costs pursuant to subparagraph (B) of paragraph (10) of
35 subdivision (a). Any claim not based upon the court's established schedule of
36 attorney's fees for actions on a contract shall bear the burden of proof. Attorney's
37 fees allowable as costs pursuant to subparagraph (B) of paragraph (10) of
38 subdivision (a) may be fixed as follows: (A) upon a noticed motion, (B) at the time
39 a statement of decision is rendered, (C) upon application supported by affidavit
40 made concurrently with a claim for other costs, or (D) upon entry of default
41 judgment. Attorney's fees allowable as costs pursuant to subparagraph (A) or (C)
42 of paragraph (10) of subdivision (a) shall be fixed either upon a noticed motion or

1 upon entry of a default judgment, unless otherwise provided by stipulation of the
2 parties.

3 Attorney's fees awarded pursuant to Section 1717 of the Civil Code are
4 allowable costs under Section 1032 as authorized by subparagraph (A) of
5 paragraph (10) of subdivision (a).

6 **Comment.** Subdivision (a)(3) of Section 1033.5 is amended to reflect advances in recording
7 technology and for consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068
8 (replacing numerous references to "audiotape" in Civil Discovery Act with either "audio
9 technology," "audio recording," or "audio record," as context required).

10 **Code Civ. Proc. § 2025.560 (amended). Recording of deposition testimony**

11 SEC. _____. Section 2025.560 of the Code of Civil Procedure is amended to
12 read:

13 2025.560. (a) An audio or video ~~record~~ recording of deposition testimony made
14 by, or at the direction of, any party, including a certified ~~tape~~ recording made by
15 an operator qualified under subdivisions (b) to (f), inclusive, of Section 2025.340,
16 shall not be filed with the court. Instead, the operator shall retain custody of that
17 ~~record~~ recording and shall store it under conditions that will protect it against loss,
18 destruction, or tampering, and preserve as far as practicable the quality of the
19 recording and the integrity of the testimony and images it contains.

20 (b) At the request of any party to the action, including a party who did not attend
21 the taking of the deposition testimony, or at the request of the deponent, that
22 operator shall promptly do both of the following:

23 (1) Permit the one making the request to hear or to view the recording on receipt
24 of payment of a reasonable charge for providing the facilities for hearing or
25 viewing the recording.

26 (2) Furnish a copy of the audio or video recording to the one making the request
27 on receipt of payment of the reasonable cost of making that copy of the recording.

28 (c) The attorney or operator who has custody of an audio or video ~~record~~
29 recording of deposition testimony made by, or at the direction of, any party, shall
30 retain custody of it until six months after final disposition of the action. At that
31 time, the audio or video recording may be destroyed or erased, unless the court, on
32 motion of any party and for good cause shown, orders that the recording be
33 preserved for a longer period.

34 **Comment.** Section 2025.560 is amended to reflect advances in recording technology and for
35 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
36 numerous references to "audiotape" in Civil Discovery Act with either "audio technology,"
37 "audio recording," or "audio record," as context required).

38 EDUCATION CODE

39 **Educ. Code § 8971 (amended). Definitions**

40 SEC. _____. Section 8971 of the Education Code is amended to read:

1 8971. As used in this chapter, the following terms shall have the following
2 meanings:

3 (a) “Child development program” means a full-day or part-day comprehensive
4 developmental program for children ages 0 to 14 years that is administered by the
5 State Department of Education.

6 (b) “Early primary program,” means an integrated, experiential, and
7 developmentally appropriate educational program for children in preschool,
8 kindergarten, and grades 1 to 3, inclusive, that incorporates various instructional
9 strategies and authentic assessment practices, including educationally appropriate
10 curricula, heterogeneous groupings, active learning activities, oral language
11 development, small-group instruction, peer interaction, use of concrete
12 manipulative materials in the classroom, planned articulation among preschool,
13 kindergarten and primary grades, and parent involvement and education.

14 (c) “Integrated, experiential, and developmentally appropriate educational
15 program” means a program that is designed around the abilities and interests of the
16 children in the program and one in which children learn about the various subjects
17 simultaneously, as opposed to segmented courses, and through “hands-on” or
18 “active learning” teaching methods that are more appropriate for young children
19 than the academic “textbook” approach.

20 (d) “Preschool program” means a comprehensive developmental program for
21 children who are too young to enroll in kindergarten.

22 (e) “Portfolio material” means a selection of representative samples of the
23 child’s performance within the program setting that may include, but not be
24 limited to, teacher observations, work samples, developmental profiles,
25 photographs, and audio or video ~~tapes~~ recordings that present a picture of the
26 child’s progress over time.

27 (f) “School district” includes county offices of education.

28 (g) “State preschool program,” means a part-day comprehensive developmental
29 program for children three to five years of age from low-income families,
30 administered by the State Department of Education.

31 **Comment.** Subdivision (e) of Section 8971 is amended to reflect advances in recording
32 technology and for consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068
33 (replacing numerous references to “audiotape” in Civil Discovery Act with either “audio
34 technology,” “audio recording,” or “audio record,” as context required).

35 **Educ. Code § 17002 (amended). Definitions**

36 SEC. _____. Section 17002 of the Education Code is amended to read:

37 17002. The following terms wherever used or referred to in this chapter, shall
38 have the following meanings, respectively, unless a different meaning appears
39 from the context:

40 (a) “Apportionment” means a reservation of funds necessary to finance the cost
41 of any project approved by the board for lease to an applicant school district.

42 (b) “Board” means the State Allocation Board.

1 (c) “Cost of project” includes, but is not limited to, the cost of all real estate
2 property rights, and easements acquired, and the cost of developing the site and
3 streets and utilities immediately adjacent thereto, the cost of construction,
4 reconstruction, or modernization of buildings and the furnishing and equipping,
5 including the purchase of educational technology hardware, of those buildings, the
6 supporting wiring and cabling, and the technological modernization of existing
7 buildings to support that hardware, the cost of plans, specifications, surveys, and
8 estimates of costs, and other expenses that are necessary or incidental to the
9 financing of the project. For purposes of this section, “educational technology
10 hardware” includes, but is not limited to, computers, telephones, televisions, and
11 video cassette recorders recording equipment.

12 (d)(1) “Good repair” means the facility is maintained in a manner that assures
13 that it is clean, safe, and functional as determined pursuant to a school facility
14 inspection and evaluation instrument developed by the Office of Public School
15 Construction and approved by the board or a local evaluation instrument that
16 meets the same criteria. Until the school facility inspection and evaluation
17 instrument is approved by the board, “good repair” means the facility is
18 maintained in a manner that assures that it is clean, safe, and functional as
19 determined by the interim evaluation instrument developed by the Office of Public
20 School Construction or a local evaluation instrument that meets the same criteria
21 as the interim evaluation instrument. The school facility inspection and evaluation
22 instrument and local evaluation instruments that meet the minimum criteria of this
23 subdivision shall not require capital enhancements beyond the standards to which
24 the facility was designed and constructed. In order to provide that school facilities
25 are reviewed to be clean, safe, and functional, the school facility inspection and
26 evaluation instrument and local evaluation instruments shall include at least the
27 following criteria:

28 (A) Gas systems and pipes appear and smell safe, functional, and free of leaks.

29 (B)(i) Mechanical systems, including heating, ventilation, and air-conditioning
30 systems, are functional and unobstructed.

31 (ii) Appear to supply adequate amount of air to all classrooms, work spaces, and
32 facilities.

33 (iii) Maintain interior temperatures within normally acceptable ranges.

34 (C) Doors and windows are intact, functional and open, close, and lock as
35 designed, unless there is a valid reason they should not function as designed.

36 (D) Fences and gates are intact, functional, and free of holes and other
37 conditions that could present a safety hazard to pupils, staff, or others. Locks and
38 other security hardware function as designed.

39 (E) Interior surfaces, including walls, floors, and ceilings, are free of safety
40 hazards from tears, holes, missing floor and ceiling tiles, torn carpet, water
41 damage, or other cause. Ceiling tiles are intact. Surfaces display no evidence of
42 mold or mildew.

1 (F) Hazardous and flammable materials are stored properly. No evidence of
2 peeling, chipping, or cracking paint is apparent. No indicators of mold, mildew, or
3 asbestos exposure are evident. There is no apparent evidence of hazardous
4 materials that may pose a threat to the health and safety of pupils or staff.

5 (G) Structures, including posts, beams, supports for portable classrooms and
6 ramps, and other structural building members appear intact, secure, and functional
7 as designed. Ceilings and floors are not sloping or sagging beyond their intended
8 design. There is no visible evidence of severe cracks, dry rot, mold, or damage that
9 undermines structural components.

10 (H) Fire sprinklers, fire extinguishers, emergency alarm systems, and all
11 emergency equipment and systems appear to be functioning properly. Fire alarm
12 pull stations are clearly visible. Fire extinguishers are current and placed in all
13 required areas, including every classroom and assembly area. Emergency exits are
14 clearly marked and unobstructed.

15 (I) Electrical systems, components, and equipment, including switches, junction
16 boxes, panels, wiring, outlets, and light fixtures, are securely enclosed, properly
17 covered and guarded from pupil access, and appear to be working properly.

18 (J) Lighting appears to be adequate and working properly. Lights do not flicker,
19 dim, or malfunction, and there is no unusual hum or noise from light fixtures.
20 Exterior lights onsite appear to be working properly.

21 (K) No visible or odorous indicators of pest or vermin infestation are evident.

22 (L) Interior and exterior drinking fountains are functional, accessible, and free of
23 leaks. Drinking fountain water pressure is adequate. Fountain water is clear and
24 without unusual taste or odor, and moss, mold, or excessive staining is not evident.

25 (M)(i) Restrooms and restroom fixtures are functional.

26 (ii) Appear to be maintained and stocked with supplies regularly.

27 (iii) Appear to be accessible to pupils during the schoolday.

28 (iv) Appear to be in compliance with Section 35292.5.

29 (N) The sanitary sewer system controls odor as designed, displays no signs of
30 stoppage, backup, or flooding, in the facilities or on school grounds, and appears
31 to be functioning properly.

32 (O) Roofs, gutters, roof drains, and downspouts appear to be functioning
33 properly and are free of visible damage and evidence of disrepair when observed
34 from the ground inside and outside of the building.

35 (P) The school grounds do not exhibit signs of drainage problems, such as
36 visible evidence of flooded areas, eroded soil, water damage to asphalt
37 playgrounds or parking areas, or clogged storm drain inlets.

38 (Q) Playground equipment and exterior fixtures, seating, tables, and equipment
39 are functional and free of significant cracks, trip hazards, holes, deterioration that
40 affects functionality or safety, and other health and safety hazards.

41 (R) School grounds, fields, walkways, and parking lot surfaces are free of
42 significant cracks, trip hazards, holes, deterioration that affects functionality or
43 safety, and other health and safety hazards.

1 (S) Overall cleanliness of the school grounds, buildings, common areas, and
2 individual rooms demonstrates that all areas appear to have been cleaned
3 regularly, and are free of accumulated refuse and unabated graffiti. Restrooms,
4 drinking fountains, and food preparation or serving areas appear to have been
5 cleaned each day that the school is in session.

6 (2)(A) On or before January 1, 2007, the Office of Public School Construction
7 shall develop the school facility inspection and evaluation instrument and
8 instructions for users. The school facility inspection and evaluation instrument and
9 local evaluation instruments that meet the minimum criteria of this subdivision
10 shall include a system that will evaluate each facility, based on the criteria listed in
11 paragraph (1), on a scale of “good,” “fair,” or “poor,” as developed by the Office
12 of Public School Construction, and provide an overall summary of the conditions
13 at each school on a scale of “exemplary,” “good,” “fair,” or “poor.”

14 (B) On or before July 1, 2007, the Office of Public School Construction, in
15 consultation with county offices of education, shall define objective criteria for
16 determining the overall summary of the conditions of schools.

17 (C) For purposes of this paragraph, “users” means local educational agencies
18 that participate in either of the programs established pursuant to this chapter,
19 Chapter 12.5 (commencing with Section 17070.10), or Section 17582.

20 (e) “Lease” includes a lease with an option to purchase.

21 (f) “Project” means the facility being constructed or acquired by the state for
22 rental to the applicant school district and may include the reconstruction or
23 modernization of existing buildings, construction of new buildings, the grading
24 and development of sites, acquisition of sites therefor and any easements or rights-
25 of-way pertinent thereto or necessary for its full use including the development of
26 streets and utilities.

27 (g) “Property” includes all property, real, personal or mixed, tangible or
28 intangible, or any interest therein necessary or desirable for carrying out the
29 purposes of this chapter.

30 **Comment.** Subdivision (c) of Section 17002 is amended to reflect advances in recording
31 technology and for consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068
32 (replacing numerous references to “audiotape” in Civil Discovery Act with either “audio
33 technology,” “audio recording,” or “audio record,” as context required).

34 **Educ. Code § 18032 (amended). Library policy regarding video recordings**

35 SEC. _____. Section 18032 of the Education Code is amended to read:

36 18032. (a) Every public library that receives state funds pursuant to this chapter
37 and that provides public access to ~~motion picture videotapes~~ video recordings
38 shall, by a majority vote of the governing board, adopt a policy regarding access
39 by minors to ~~motion picture videotapes~~ video recordings by January 1, 2000.

40 (b) Every public library that is required to adopt a policy pursuant to subdivision
41 (a) shall make that policy available to members of the public at every library
42 branch.

1 **Comment.** Section 18032 is amended to reflect advances in recording technology and for
2 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
3 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”
4 “audio recording,” or “audio record,” as context required).

5 **Educ. Code § 19323 (amended). Loan of audio recordings**

6 SEC. _____. Section 19323 of the Education Code is amended to read:

7 19323. The State Librarian shall make available in the state on a loan basis to
8 legally blind persons, or to persons who are visually or physically handicapped to
9 such an extent that they are unable to read conventional printed materials, ~~in the~~
10 ~~state~~ audio recordings of books and other related materials. The ~~tape~~ audio
11 recordings shall be selected by the State Library on the same basis as the State
12 Library’s general program for providing library materials to legally blind readers.

13 **Comment.** Section 19323 is amended to reflect advances in recording technology and for
14 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
15 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”
16 “audio recording,” or “audio record,” as context required).

17 The section is also amended to make a stylistic revision.

18 **Educ. Code § 32255 (amended). Definitions**

19 SEC. _____. Section 32255 of the Education Code is amended to read:

20 32255. As used in this chapter:

21 (a) “Animal” means any living organism of the kingdom animalia, beings that
22 typically differ from plants in capacity for spontaneous movement and rapid motor
23 response to stimulation by a usually greater mobility with some degree of
24 voluntary locomotor ability and by greater irritability commonly mediated through
25 a more or less centralized nervous system, beings that are characterized by a
26 requirement for complex organic nutrients including proteins or their constituents
27 that are usually digested in an internal cavity before assimilation into the body
28 proper, and beings that are distinguished from typical plants by lack of
29 chlorophyll, by an inability to perform photosynthesis, by cells that lack cellulose
30 walls, and by the frequent presence of discrete complex sense organs.

31 (b) “Alternative education project” includes, but is not limited to, the use of
32 video ~~tapes~~ recordings, models, films, books, and computers, which would provide
33 an alternate avenue for obtaining the knowledge, information, or experience
34 required by the course of study in question. “Alternative education project” also
35 includes “alternative test.”

36 (c) “Pupil” means a person under 18 years of age who is matriculated in a course
37 of instruction in an educational institution within the scope of Section 32255.5.
38 For the purpose of asserting the pupil’s rights and receiving any notice or response
39 pursuant to this chapter, “pupil” also includes the parents of the matriculated
40 minor.

41 **Comment.** Section 32255 is amended to reflect advances in recording technology and for
42 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing

1 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”
2 “audio recording,” or “audio record,” as context required).

3 **Educ. Code § 49091.10 (amended). Parental right of inspection**

4 SEC. _____. Section 49091.10 of the Education Code is amended to read:

5 49091.10. (a) All primary supplemental instructional materials and assessments,
6 including textbooks, teacher’s manuals, films, ~~tapes~~ audio and video recordings,
7 and software shall be compiled and stored by the classroom instructor and made
8 available promptly for inspection by a parent or guardian in a reasonable
9 timeframe or in accordance with procedures determined by the governing board of
10 the school district.

11 (b) A parent or guardian has the right to observe instruction and other school
12 activities that involve his or her child in accordance with procedures determined
13 by the governing board of the school district to ensure the safety of pupils and
14 school personnel and to prevent undue interference with instruction or harassment
15 of school personnel. Reasonable accommodation of parents and guardians shall be
16 considered by the governing board of the school district. Upon written request by
17 the parent or guardian, school officials shall arrange for the parental observation of
18 the requested class or classes or activities by that parent or guardian in a
19 reasonable timeframe and in accordance with procedures determined by the
20 governing board of the school district.

21 **Comment.** Section 49091.10 is amended to reflect advances in recording technology and for
22 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
23 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”
24 “audio recording,” or “audio record,” as context required).

25 **Educ. Code § 52740 (amended). Instructional material relating to certain important**
26 **historical events**

27 SEC. _____. Section 52740 of the Education Code is amended to read:

28 52740. (a) It is the intent of the Legislature to provide accurate instructional
29 materials to schools on all of the following topics:

30 (1) The internment in the United States of persons of Japanese origin and its
31 impact on Japanese-American citizens.

32 (2) The Armenian genocide.

33 (3) The World War II internment, relocation, and restriction in the United States
34 of persons of Italian origin and its impact on the Italian-American community.

35 (b) The Legislature finds and declares that there are few films or ~~videotapes~~
36 video recordings available on the subjects of the internment of persons of Japanese
37 origin, the Armenian genocide, and the World War II internment, relocation, and
38 restriction of persons of Italian origin, for teachers to use when teaching pupils
39 about these three devastating events. The shortage of available films or ~~videotapes~~
40 video recordings on these subjects is especially true for the Armenian genocide.

41 (c) The Legislature hereby finds and declares that films and ~~videotapes~~ video
42 recordings giving a historically accurate depiction of the internment in the United

1 States of persons of Japanese origin during World War II, the Armenian genocide,
2 and the World War II internment, relocation, and restriction of persons of Italian
3 origin, should be made in order that pupils will recognize these events for the
4 horror they represented. The Legislature hereby encourages teachers to use these
5 films and ~~videotapes~~ video recordings as a resource in teaching pupils about these
6 three important historical events that are commonly overlooked in today's school
7 curriculum.

8 **Comment.** Section 52740 is amended to reflect advances in recording technology and for
9 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
10 numerous references to "audiotape" in Civil Discovery Act with either "audio technology,"
11 "audio recording," or "audio record," as context required).

12 **Educ. Code § 52742 (amended). Review of films and video recordings**

13 SEC. _____. Section 52742 of the Education Code is amended to read:

14 52742. The films or video ~~tapes~~ recordings produced pursuant to this article
15 shall be submitted to the Curriculum Development and Supplemental Materials
16 Commission for its review, and may be made available to schools, as provided by
17 this article, only upon adoption by the Curriculum Development and Supplemental
18 Materials Commission.

19 **Comment.** Section 52742 is amended to reflect advances in recording technology and for
20 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
21 numerous references to "audiotape" in Civil Discovery Act with either "audio technology,"
22 "audio recording," or "audio record," as context required).

23 **Educ. Code § 52743 (amended). Availability of films and video recordings**

24 SEC. _____. Section 52743 of the Education Code is amended to read:

25 52743. The State Department of Education shall make available the films or
26 video ~~tapes~~ recordings produced pursuant to this article to schools.

27 **Comment.** Section 52743 is amended to reflect advances in recording technology and for
28 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
29 numerous references to "audiotape" in Civil Discovery Act with either "audio technology,"
30 "audio recording," or "audio record," as context required).

31 **Educ. Code § 56341.1 (amended). Individualized education programs**

32 SEC. _____. Section 56341.1 of the Education Code is amended to read:

33 56341.1. (a) When developing each pupil's individualized education program,
34 the individualized education program team shall consider the following:

35 (1) The strengths of the pupil.

36 (2) The concerns of the parents or guardians for enhancing the education of the
37 pupil.

38 (3) The results of the initial assessment or most recent assessment of the pupil.

39 (4) The academic, developmental, and functional needs of the child.

40 (b) The individualized education program team shall do the following:

1 (1) In the case of a pupil whose behavior impedes his or her learning or that of
2 others, consider the use of positive behavioral interventions and supports, and
3 other strategies, to address that behavior.

4 (2) In the case of a pupil with limited-English proficiency, consider the language
5 needs of the pupil as those needs relate to the pupil's individualized education
6 program.

7 (3) In the case of a pupil who is blind or visually impaired, provide for
8 instruction in braille, and the use of braille, unless the individualized education
9 program team determines, after an assessment of the pupil's reading and writing
10 skills, needs, and appropriate reading and writing media, including an assessment
11 of the pupil's future needs for instruction in braille or the use of braille, that
12 instruction in braille or the use of braille is not appropriate for the pupil.

13 (4) Consider the communication needs of the pupil, and in the case of a pupil
14 who is deaf or hard of hearing, consider the pupil's language and communication
15 needs, opportunities for direct communications with peers and professional
16 personnel in the pupil's language and communication mode, academic level, and
17 full range of needs, including opportunities for direct instruction in the pupil's
18 language and communication mode.

19 (5) Consider whether the pupil requires assistive technology devices and
20 services as defined in Section 1401(1) and (2) of Title 20 of the United States
21 Code.

22 (c) If, in considering the special factors described in subdivisions (a) and (b), the
23 individualized education program team determines that a pupil needs a particular
24 device or service, including an intervention, accommodation, or other program
25 modification, in order for the pupil to receive a free appropriate public education,
26 the individualized education program team shall include a statement to that effect
27 in the pupil's individualized education program.

28 (d) The individualized education program team shall review the pupil's
29 individualized education program periodically, but not less frequently than
30 annually, to determine whether the annual goals for the pupil are being achieved,
31 and revise the individualized education program, as appropriate, to address among
32 other matters the following:

33 (1) Any lack of expected progress toward the annual goals and in the general
34 education curriculum, where appropriate.

35 (2) The results of any reassessment conducted pursuant to Section 56381.

36 (3) Information about the pupil provided to, or by, the parents or guardians, as
37 described in subdivision (b) of Section 56381.

38 (4) The pupil's anticipated needs.

39 (5) Any other relevant matter.

40 (e) A regular education teacher of the pupil, who is a member of the
41 individualized education program team, shall participate in the review and revision
42 of the individualized education program of the pupil consistent with Section
43 1414(d)(1)(C) of Title 20 of the United States Code.

1 (f) The parent or guardian shall have the right to present information to the
2 individualized education program team in person or through a representative and
3 the right to participate in meetings, relating to eligibility for special education and
4 related services, recommendations, and program planning.

5 (g)(1) Notwithstanding Section 632 of the Penal Code, the parent or guardian, or
6 local educational agency shall have the right to audio record ~~electronically~~ the
7 proceedings of individualized education program team meetings ~~on an audiotape~~
8 ~~recorder~~. The parent or guardian, or local educational agency shall notify the
9 members of the individualized education program team of their intent to record a
10 meeting at least 24 hours prior to the meeting. If the local educational agency
11 initiates the notice of intent to ~~audiotape~~ audio record a meeting and the parent or
12 guardian objects or refuses to attend the meeting because it will be ~~tape~~ audio
13 recorded, the meeting shall not be audio recorded ~~on an audiotape recorder~~.

14 (2) The Legislature hereby finds as follows:

15 (A) Under federal law, ~~audiotape~~ audio recordings made by a local educational
16 agency are subject to the federal Family Educational Rights and Privacy Act (20
17 U.S.C. Sec. 1232g), and are subject to the confidentiality requirements of the
18 regulations under Sections 300.610 to 300.626, inclusive, of Part 34 of the Code of
19 Federal Regulations.

20 (B) Parents or guardians have the right, pursuant to Sections 99.10 to 99.22,
21 inclusive, of Title 34 of the Code of Federal Regulations, to do all of the
22 following:

23 (i) Inspect and review the ~~tape~~ audio recordings.

24 (ii) Request that the ~~tape~~ audio recordings be amended if the parent or guardian
25 believes that they contain information that is inaccurate, misleading, or in
26 violation of the rights of privacy or other rights of the individual with exceptional
27 needs.

28 (iii) Challenge, in a hearing, information that the parent or guardian believes is
29 inaccurate, misleading, or in violation of the individual's rights of privacy or other
30 rights.

31 (h) It is the intent of the Legislature that the individualized education program
32 team meetings be nonadversarial and convened solely for the purpose of making
33 educational decisions for the good of the individual with exceptional needs.

34 **Comment.** Subdivision (g) of Section 56341.1 is amended to reflect advances in recording
35 technology and for consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068
36 (replacing numerous references to "audiotape" in Civil Discovery Act with either "audio
37 technology," "audio recording," or "audio record," as context required).

38 Subdivision (g) is also amended to correct an erroneous cross reference.

39 **Educ. Code § 60204 (amended). Duties of commission**

40 SEC. _____. Section 60204 of the Education Code is amended to read:

41 60204. The commission shall:

42 (a) Recommend curriculum frameworks to the state board.

1 (b) Develop criteria for evaluating instructional materials submitted for adoption
2 so that the materials adopted shall adequately cover the subjects in the indicated
3 grade or grades and which comply with the provisions of Article 3 (commencing
4 with Section 60040) of Chapter 1. The criteria developed by the commission shall
5 be consistent with the duties of the state board pursuant to Section 60200. The
6 criteria shall be public information and shall be provided in written or printed form
7 to any person requesting such information.

8 (c) Study and evaluate instructional materials submitted for adoption.

9 (d) Recommend to the state board instructional materials which it approves for
10 adoption.

11 (e) Review and have the authority to adopt the educational films or ~~videotapes~~
12 video recordings produced in accordance with Article 3 (commencing with
13 Section 52740) of Chapter 11 of Part 28.

14 (f) Recommend to the state board policies and activities to assist the department
15 and school districts in the use of the curriculum framework and other available
16 model curriculum materials for the purpose of guiding and strengthening the
17 quality of instruction in the public schools.

18 **Comment.** Section 60204 is amended to reflect advances in recording technology and for
19 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
20 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”
21 “audio recording,” or “audio record,” as context required).

22 ELECTION CODE

23 **Elec. Code § 2052 (amended). Visually impaired individuals**

24 SEC. _____. Section 2052 of the Election Code is amended to read:

25 2052. It is the intent of the Legislature to promote the fundamental right to vote
26 of visually impaired individuals, and to make efforts to improve public awareness
27 of the availability of ballot pamphlet ~~cassette tapes~~ audio recordings and improve
28 their delivery to these voters.

29 **Comment.** Section 2052 is amended to reflect advances in recording technology and for
30 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
31 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”
32 “audio recording,” or “audio record,” as context required).

33 **Elec. Code § 2053 (amended). Visually Impaired Voter Assistance Advisory Board**

34 SEC. _____. Section 2053 of the Election Code is amended to read:

35 2053. (a) The Secretary of State shall establish a Visually Impaired Voter
36 Assistance Advisory Board. This board shall consist of the Secretary of State or
37 his or her designee and the following membership, appointed by the Secretary of
38 State:

39 (1) A representative from the State Advisory Council on Libraries.

40 (2) One member from each of three private organizations. Two of the
41 organizations shall be representative of organizations for blind persons in the state.

1 (b) The board shall do all of the following:

2 (1) Establish guidelines for reaching as many visually impaired persons as
3 practical.

4 (2) Make recommendations to the Secretary of State for improving the
5 availability and accessibility of ballot pamphlet ~~cassette tapes~~ audio recordings
6 and their delivery to visually impaired voters. The Secretary of State may
7 implement the recommendations made by the board.

8 (3) Increase the distribution of public service announcements identifying the
9 availability of ballot pamphlet ~~cassette tapes~~ audio recordings at least 45 days
10 before any federal, state, and local election.

11 (4) Promote the Secretary of State's toll-free voter registration telephone line for
12 citizens needing voter registration information, including information for those
13 who are visually handicapped, and the toll-free telephone service regarding the
14 California State Library and regional library service for the visually impaired.

15 (c) No member shall receive compensation, but each member shall be
16 reimbursed for his or her reasonable and necessary expenses in connection with
17 service on the board.

18 **Comment.** Section 2053 is amended to reflect advances in recording technology and for
19 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
20 numerous references to "audiotape" in Civil Discovery Act with either "audio technology,"
21 "audio recording," or "audio record," as context required).

22 **Elec. Code § 9082.5 (amended). Audio recording of state ballot pamphlet**

23 SEC. _____. Section 9082.5 of the Election Code is amended to read:

24 9082.5. The Secretary of State shall cause to be produced an ~~audiocassette~~ audio
25 recorded version of the state ballot pamphlet. This audio recorded ~~cassette~~ version
26 shall be made available in quantities to be determined by the Secretary of State
27 and shall contain an impartial summary, arguments for and against, rebuttal
28 arguments, and other information concerning each measure that the Secretary of
29 State determines will make the ~~cassette~~ audio recorded version of the state ballot
30 pamphlet easier to understand or more useful to the average voter.

31 **Comment.** Section 9082.5 is amended to reflect advances in recording technology and for
32 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
33 numerous references to "audiotape" in Civil Discovery Act with either "audio technology,"
34 "audio recording," or "audio record," as context required).

35 **Elec. Code § 18541 (amended). Dissuading voters**

36 SEC. _____. Section 18541 of the Election Code is amended to read:

37 18541. (a) No person shall, with the intent of dissuading another person from
38 voting, within 100 feet of a polling place, do any of the following:

39 (1) Solicit a vote or speak to a voter on the subject of marking his or her ballot.

40 (2) Place a sign relating to voters' qualifications or speak to a voter on the
41 subject of his or her qualifications except as provided in Section 14240.

1 (3) Photograph, ~~videotape~~ video record, or otherwise record a voter entering or
2 exiting a polling place.

3 (b) Any violation of this section is punishable by imprisonment in a county jail
4 for not more than 12 months, or in the state prison. Any person who conspires to
5 violate this section is guilty of a felony.

6 (c) For purposes of this section, 100 feet means a distance of 100 feet from the
7 room or rooms in which voters are signing the roster and casting ballots.

8 **Comment.** Section 18541 is amended to reflect advances in recording technology and for
9 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
10 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”
11 “audio recording,” or “audio record,” as context required).

12 EVIDENCE CODE

13 **Evid. Code § 795 (amended). Professional competency examination**

14 SEC. _____. Section 795 of the Evidence Code is amended to read:

15 795. (a) The testimony of a witness is not inadmissible in a criminal proceeding
16 by reason of the fact that the witness has previously undergone hypnosis for the
17 purpose of recalling events which are the subject of the witness’ testimony, if all
18 of the following conditions are met:

19 (1) The testimony is limited to those matters which the witness recalled and
20 related prior to the hypnosis.

21 (2) The substance of the prehypnotic memory was preserved in ~~written,~~
22 ~~audiotape, or videotape form~~ a writing, audio recording, or video recording prior
23 to the hypnosis.

24 (3) The hypnosis was conducted in accordance with all of the following
25 procedures:

26 (A) A written record was made prior to hypnosis documenting the subject’s
27 description of the event, and information which was provided to the hypnotist
28 concerning the subject matter of the hypnosis.

29 (B) The subject gave informed consent to the hypnosis.

30 (C) The hypnosis session, including the pre- and post-hypnosis interviews, was
31 ~~videotape~~ video recorded for subsequent review.

32 (D) The hypnosis was performed by a licensed medical doctor, psychologist,
33 licensed clinical social worker, or a licensed marriage and family therapist
34 experienced in the use of hypnosis and independent of and not in the presence of
35 law enforcement, the prosecution, or the defense.

36 (4) Prior to admission of the testimony, the court holds a hearing pursuant to
37 Section 402 of the Evidence Code at which the proponent of the evidence proves
38 by clear and convincing evidence that the hypnosis did not so affect the witness as
39 to render the witness’ prehypnosis recollection unreliable or to substantially impair
40 the ability to cross-examine the witness concerning the witness’ prehypnosis

1 recollection. At the hearing, each side shall have the right to present expert
2 testimony and to cross-examine witnesses.

3 (b) Nothing in this section shall be construed to limit the ability of a party to
4 attack the credibility of a witness who has undergone hypnosis, or to limit other
5 legal grounds to admit or exclude the testimony of that witness.

6 **Comment.** Section 795 is amended to reflect advances in recording technology and for
7 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
8 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”
9 “audio recording,” or “audio record,” as context required).

10 **Evid. Code § 1118 (amended). Oral agreement**

11 SEC. _____. Section 1118 of the Evidence Code is amended to read:

12 1118. An oral agreement “in accordance with Section 1118” means an oral
13 agreement that satisfies all of the following conditions:

14 (a) The oral agreement is recorded by a court reporter, ~~tape recorder,~~ or other
15 reliable means of ~~sound~~ audio recording.

16 (b) The terms of the oral agreement are recited on the record in the presence of
17 the parties and the mediator, and the parties express on the record that they agree
18 to the terms recited.

19 (c) The parties to the oral agreement expressly state on the record that the
20 agreement is enforceable or binding or words to that effect.

21 (d) The recording is reduced to writing and the writing is signed by the parties
22 within 72 hours after it is recorded.

23 **Comment.** Section 1118 is amended to reflect advances in recording technology and for
24 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
25 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”
26 “audio recording,” or “audio record,” as context required).

27 **Evid. Code § 1294 (amended). Prior inconsistent statement**

28 SEC. _____. Section 1294 of the Evidence Code is amended to read:

29 1294. (a) The following evidence of prior inconsistent statements of a witness
30 properly admitted in a preliminary hearing or trial of the same criminal matter
31 pursuant to Section 1235 is not made inadmissible by the hearsay rule if the
32 witness is unavailable and former testimony of the witness is admitted pursuant to
33 Section 1291:

34 (1) A ~~videotaped~~ video recorded statement introduced at a preliminary hearing
35 or prior proceeding concerning the same criminal matter.

36 (2) A transcript, containing the statements, of the preliminary hearing or prior
37 proceeding concerning the same criminal matter.

38 (b) The party against whom the prior inconsistent statements are offered, at his
39 or her option, may examine or cross-examine any person who testified at the
40 preliminary hearing or prior proceeding as to the prior inconsistent statements of
41 the witness.

1 cross-examine witnesses; to have an attorney represent him; and to have an
2 attorney appointed to represent him if he cannot afford one in a paternity action
3 filed by a local child support agency.

4 (4) That by signing the voluntary declaration of paternity, the father is
5 voluntarily waiving his constitutional rights.

6 (c) Parents shall also be given oral notice of the rights and responsibilities
7 specified in subdivision (b). Oral notice may be accomplished through the use of
8 audio or ~~videotape~~ video recorded programs developed by the Department of
9 Child Support Services to the extent permitted by federal law.

10 (d) The Department of Child Support Services shall, free of charge, make
11 available to hospitals, clinics, and other places of birth any and all informational
12 and training materials for the program under this chapter, as well as the paternity
13 declaration form. The Department of Child Support Services shall make training
14 available to every participating hospital, clinic, local registrar of births and deaths,
15 and other place of birth no later than June 30, 1999.

16 (e) The Department of Child Support Services may adopt regulations, including
17 emergency regulations, necessary to implement this chapter.

18 **Comment.** Subdivision (c) of Section 7572 is amended to reflect advances in recording
19 technology and for consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068
20 (replacing numerous references to “audiotape” in Civil Discovery Act with either “audio
21 technology,” “audio recording,” or “audio record,” as context required).

22 **Fam. Code § 10005 (amended). Additional duties of family law facilitator**

23 SEC. _____. Section 10005 of the Family Code is amended to read:

24 10005. (a) By local rule, the superior court may designate additional duties of
25 the family law facilitator, which may include, but are not limited to, the following:

26 (1) Meeting with litigants to mediate issues of child support, spousal support,
27 and maintenance of health insurance, subject to Section 10012. Actions in which
28 one or both of the parties are unrepresented by counsel shall have priority.

29 (2) Drafting stipulations to include all issues agreed to by the parties, which may
30 include issues other than those specified in Section 10003.

31 (3) If the parties are unable to resolve issues with the assistance of the family
32 law facilitator, prior to or at the hearing, and at the request of the court, the family
33 law facilitator shall review the paperwork, examine documents, prepare support
34 schedules, and advise the judge whether or not the matter is ready to proceed.

35 (4) Assisting the clerk in maintaining records.

36 (5) Preparing formal orders consistent with the court’s announced order in cases
37 where both parties are unrepresented.

38 (6) Serving as a special master in proceedings and making findings to the court
39 unless he or she has served as a mediator in that case.

40 ~~(7) Providing the services specified in Division 15 (commencing with Section~~
41 ~~10100). Except for the funding specifically designated for visitation programs~~
42 ~~pursuant to Section 669B of Title 42 of the United States Code, Title IV-D child~~

1 ~~support funds shall not be used to fund the services specified in Division 15~~
2 ~~(commencing with Section 10100).~~

3 (8) Providing the services specified in Section 10004 concerning the issues of
4 child custody and visitation as they relate to calculating child support, if funding is
5 provided for that purpose.

6 (b) If staff and other resources are available and the duties listed in subdivision
7 (a) have been accomplished, the duties of the family law facilitator may also
8 include the following:

9 (1) Assisting the court with research and any other responsibilities which will
10 enable the court to be responsive to the litigants' needs.

11 (2) Developing programs for bar and community outreach through day and
12 evening programs, ~~videotapes~~ video recordings, and other innovative means that
13 will assist unrepresented and financially disadvantaged litigants in gaining
14 meaningful access to family court. These programs shall specifically include
15 information concerning underutilized legislation, such as expedited child support
16 orders (Chapter 5 (commencing with Section 3620) of Part 1 of Division 9), and
17 preexisting, court-sponsored programs, such as supervised visitation and
18 appointment of attorneys for children.

19 **Comment.** Subdivision (a)(7) of Section 10005 is deleted as obsolete. Former Division 15 was
20 repealed by 1999 Cal. Stat. 1004, § 6.

21 Subdivision (b)(2) is amended to reflect advances in recording technology and for consistency
22 of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing numerous references
23 to "audiotape" in Civil Discovery Act with either "audio technology," "audio recording," or
24 "audio record," as context required).

25 **Fam. Code § 20034 (amended). Duties of Attorney-Mediator**

26 SEC. _____. Section 20034 of the Family Code is amended to read:

27 20034. (a) An attorney, known as an Attorney-Mediator, shall be hired to assist
28 the court in resolving child and spousal support disputes, to develop community
29 outreach programs, and to undertake other duties as assigned by the court.

30 (b) The Attorney-Mediator shall be an attorney, licensed to practice in this state,
31 with mediation or litigation experience, or both, in the field of family law.

32 (c) By local rule, the superior court may designate the duties of the Attorney-
33 Mediator, which may include, but are not limited to, the following:

34 (1) Meeting with litigants to mediate issues of child support, spousal support,
35 and maintenance of health insurance. Actions in which one or both of the parties
36 are unrepresented by counsel shall have priority.

37 (2) Preparing support schedules based on statutory guidelines accessed through
38 existing up-to-date computer technology.

39 (3) Drafting stipulations to include all issues agreed to by the parties, which may
40 include issues other than those specified in Section 20031.

41 (4) If the parties are unable to resolve issues with the assistance of the Attorney-
42 Mediator, prior to or at the hearing, and at the request of the court, the Attorney-

1 Mediator shall review the paperwork, examine documents, prepare support
2 schedules, and advise the judge whether or not the matter is ready to proceed.

3 (5) Assisting the clerk in maintaining records.

4 (6) Preparing formal orders consistent with the court's announced order in cases
5 where both parties are unrepresented.

6 (7) Serving as a special master to hearing proceedings and making findings to
7 the court unless he or she has served as a mediator in that case.

8 (8) Assisting the court with research and any other responsibilities which will
9 enable the court to be responsive to the litigants' needs.

10 (9) Developing programs for bar and community outreach through day and
11 evening programs, ~~videotapes~~ video recordings, and other innovative means that
12 will assist unrepresented and financially disadvantaged litigants in gaining
13 meaningful access to Family Court. These programs shall specifically include
14 information concerning underutilized legislation, such as expedited temporary
15 support orders (Chapter 5 (commencing with Section 3620) of Part 1 of Division
16 9), modification of support orders (Article 3 (commencing with Section 3680) of
17 Chapter 6 of Part 1 of Division 9) and preexisting, court-sponsored programs, such
18 as supervised visitation and appointment of attorneys for children.

19 (d) The court shall develop a protocol wherein all litigants, both unrepresented
20 by counsel and represented by counsel, have ultimate access to a hearing before
21 the court.

22 **Comment.** Subdivision (c)(9) of Section 20034 is amended to reflect advances in recording
23 technology and for consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068
24 (replacing numerous references to "audiotape" in Civil Discovery Act with either "audio
25 technology," "audio recording," or "audio record," as context required).

26 GOVERNMENT CODE

27 **Gov't Code § 8880.30 (amended). Regulations for determining lottery winners**

28 SEC. _____. Section 8888.30 of the Government Code is amended to read:

29 8880.30. The Commission shall promulgate regulations that specify the method
30 for determining winners in each lottery game, provided:

31 (a) A lottery game may be based on the results of a horse race with the consent
32 of the association conducting the race and the California Horse Racing Board. Any
33 compensation received by an association for the use of its races to determine the
34 winners of a lottery game shall be divided equally between commissions and
35 purses.

36 (b) If a lottery game utilizes a drawing of winning numbers, a drawing among
37 entries, or a drawing among finalists, the drawings shall always be open to the
38 public. No manual or physical selection in the drawings shall be conducted by any
39 employee of the Lottery. Except for computer automated drawings, drawings shall
40 be witnessed by an independent lottery contractor having qualifications
41 established by the Commission. Any equipment used in the drawings shall be

1 inspected by the independent lottery contractor and an employee of the Lottery
2 both before and after the drawings. The drawings and the inspections shall be both
3 audio and video recorded ~~on both videotape and audiotape~~.

4 (c) It is the intent of this chapter that the Commission may use any of a variety
5 of existing or future methods or technologies in determining winners.

6 **Comment.** Section 8880.30 is amended to reflect advances in recording technology and for
7 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
8 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”
9 “audio recording,” or “audio record,” as context required).

10 **Gov’t Code § 11124.1 (amended). Recording of public meeting**

11 SEC. _____. Section 11124.1 of the Government Code is amended to read:

12 11124.1. (a) Any person attending an open and public meeting of the state body
13 shall have the right to record the proceedings with an audio or video ~~tape~~ recorder
14 or a still or motion picture camera in the absence of a reasonable finding by the
15 state body that the recording cannot continue without noise, illumination, or
16 obstruction of view that constitutes, or would constitute, a persistent disruption of
17 the proceedings.

18 (b) Any ~~tape or film record~~ audio or video recording of an open and public
19 meeting made for whatever purpose by or at the direction of the state body shall be
20 subject to inspection pursuant to the California Public Records Act (Chapter 3.5
21 (commencing with Section 6250) of Division 7 of Title 1), but may be erased or
22 destroyed 30 days after the ~~taping or~~ recording. Any inspection of an ~~audio or~~
23 ~~video tape~~ audio or video recording shall be provided without charge on ~~an audio~~
24 ~~or video tape player~~ equipment made available by the state body.

25 (c) No state body shall prohibit or otherwise restrict the broadcast of its open
26 and public meetings in the absence of a reasonable finding that the broadcast
27 cannot be accomplished without noise, illumination, or obstruction of view that
28 would constitute a persistent disruption of the proceedings.

29 **Comment.** Section 11124.1 is amended to reflect advances in recording technology and for
30 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
31 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”
32 “audio recording,” or “audio record,” as context required).

33 **Gov’t Code § 11130 (amended). Action to stop or prevent violation of meeting provision**

34 SEC. _____. Section 11130 of the Government Code is amended to read:

35 11130. (a) The Attorney General, the district attorney, or any interested person
36 may commence an action by mandamus, injunction, or declaratory relief for the
37 purpose of stopping or preventing violations or threatened violations of this article
38 or to determine the applicability of this article to past actions or threatened future
39 action by members of the state body or to determine whether any rule or action by
40 the state body to penalize or otherwise discourage the expression of one or more of
41 its members is valid or invalid under the laws of this state or of the United States,

1 or to compel the state body to ~~tape~~ audio record its closed sessions as hereinafter
2 provided.

3 (b) The court in its discretion may, upon a judgment of a violation of Section
4 11126, order the state body to ~~tape~~ audio record its closed sessions and preserve
5 the ~~tape~~ audio recordings for the period and under the terms of security and
6 confidentiality the court deems appropriate.

7 (c)(1) Each recording so kept shall be immediately labeled with the date of the
8 closed session recorded and the title of the clerk or other officer who shall be
9 custodian of the recording.

10 (2) The ~~tapes~~ audio recordings shall be subject to the following discovery
11 procedures:

12 (A) In any case in which discovery or disclosure of the ~~tape~~ audio recording is
13 sought by the Attorney General, the district attorney, or the plaintiff in a civil
14 action pursuant to this section or Section 11130.3 alleging that a violation of this
15 article has occurred in a closed session that has been recorded pursuant to this
16 section, the party seeking discovery or disclosure shall file a written notice of
17 motion with the appropriate court with notice to the governmental agency that has
18 custody and control of the ~~tape~~ audio recording. The notice shall be given pursuant
19 to subdivision (b) of Section 1005 of the Code of Civil Procedure.

20 (B) The notice shall include, in addition to the items required by Section 1010 of
21 the Code of Civil Procedure, all of the following:

22 (i) Identification of the proceeding in which discovery or disclosure is sought,
23 the party seeking discovery or disclosure, the date and time of the meeting
24 recorded, and the governmental agency that has custody and control of the
25 recording.

26 (ii) An affidavit that contains specific facts indicating that a violation of the act
27 occurred in the closed session.

28 (3) If the court, following a review of the motion, finds that there is good cause
29 to believe that a violation has occurred, the court may review, in camera, the
30 recording of that portion of the closed session alleged to have violated the act.

31 (4) If, following the in-camera review, the court concludes that disclosure of a
32 portion of the recording would be likely to materially assist in the resolution of the
33 litigation alleging violation of this article, the court shall, in its discretion, make a
34 certified transcript of the portion of the recording a public exhibit in the
35 proceeding.

36 (5) Nothing in this section shall permit discovery of communications that are
37 protected by the attorney-client privilege.

38 **Comment.** Section 11130 is amended to reflect advances in recording technology and for
39 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
40 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”
41 “audio recording,” or “audio record,” as context required).

1 **Gov't Code § 12811.3 (amended). Employee transfer**

2 SEC. _____. Section 12811.3 of the Government Code is amended to read:

3 12811.3. (a) Notwithstanding any other provision of law and subject to the
4 provisions of subdivision (i), any employee of a department, board, or commission
5 under the jurisdiction of the Youth and Adult Correctional Agency, who is
6 designated as a peace officer described in Chapter 4.5 (commencing with Section
7 830) of Title 3 of Part 2 of the Penal Code, may transfer from his or her current
8 position to another department, board, or commission under the jurisdiction of the
9 Youth and Adult Correctional Agency.

10 (b) Any peace officer who desires to transfer to another department, board, or
11 commission pursuant to subdivision (a), and who is prohibited from carrying a
12 firearm pursuant to paragraph (8) of subdivision (g) of Section 922 of Title 18 of
13 the United States Code or Section 12021 of the Penal Code may not transfer to a
14 department, board, or commission that requires the use of a firearm.

15 (c) Any peace officer who desires to transfer to another department, board, or
16 commission pursuant to subdivision (a) to a position requiring the ability to carry a
17 firearm, as determined by the department, board, or commission, and who has not
18 completed the required training pursuant to Section 832 of the Penal Code, shall
19 successfully complete the required training before appointment to his or her new
20 peace officer position.

21 (d)(1) Any peace officer who desires to transfer shall not be required to undergo
22 a psychological screening pursuant to subdivision (f) of Section 1031 or
23 subdivision (a) of Section 13601 of the Penal Code, unless the Secretary of the
24 Youth and Adult Correctional Agency, or his or her designee, makes a
25 determination that a peace officer is required to undergo all or a portion of a
26 psychological screening as described in subdivision (f) of Section 1031 of this
27 code or subdivision (a) of Section 13601 of the Penal Code.

28 (2) The Secretary of the Youth and Adult Correctional Agency shall promulgate
29 emergency regulations in order to implement paragraph (1). Notwithstanding
30 subdivision (b) of Section 11346.1, no showing of an emergency shall be
31 necessary in order to adopt, amend, or repeal the emergency regulations required
32 by this paragraph.

33 (e) Any peace officer who has successfully completed a course of training
34 pursuant to Section 13602 of the Penal Code and who transfers to another
35 department, board, or commission pursuant to subdivision (a) shall not be required
36 to complete a new course of training pursuant to Section 13602 of the Penal Code.
37 However, each department, board, or commission may prescribe additional
38 training to be provided to an employee who transfers pursuant to subdivision (a)
39 and shall provide that training within the first six months of appointment to his or
40 her new peace officer position.

41 (f) Any peace officer who desires to transfer to another department, board, or
42 commission pursuant to subdivision (a) shall not be required to undergo a new
43 background investigation pursuant to Section 1029.1.

1 (g) Nothing in this section shall affect an employee’s seniority calculation as
2 provided for under current law or any memorandum of understanding between the
3 state and any applicable bargaining unit agreement in effect upon the effective
4 date of this section.

5 (h) The provisions of the Unit 6 Memorandum of Understanding, which expires
6 July 2, 2006, as modified by the ratified addendum dated June 30, 2004, relating to
7 the release of copies of ~~videotaped~~ video recorded incidents, shall be subject to the
8 California Public Records Act.

9 (i) This section shall become operative only when the Secretary of the Youth
10 and Adult Correctional Agency certifies in writing that it is necessary to prevent or
11 minimize employment actions, including, but not limited to, layoffs, demotions,
12 reductions in time base, or involuntary transfers of employees. In addition, the
13 Secretary of the Youth and Adult Correctional Agency shall have the sole
14 authority to designate any or all departments, boards, or commissions eligible to
15 have its peace officer employees transfer pursuant to subdivision (a) and any or all
16 departments, boards, or commissions that shall accept peace officer employees
17 under this section.

18 **Comment.** Section 12811.3 is amended to reflect advances in recording technology and for
19 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
20 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”
21 “audio recording,” or “audio record,” as context required).

22 **Gov’t Code § 14999.31 (amended). Permit to engage in film production**

23 SEC. _____. Section 14999.31 of the Government Code is amended to read:

24 14999.31. The Film Office and its director shall encourage the use of the
25 uniform application form described in Section 14999.32 for obtaining a local
26 permit to engage in film production within the jurisdiction of a county, city, or city
27 and county. As used in this chapter “film” includes, but is not limited to, feature
28 motion pictures, ~~videotapes~~ video recordings, television motion pictures,
29 commercials, and stills. “Production” means the activity of making a film for
30 commercial or noncommercial purposes on property owned by a county, city, or
31 city and county or on private property within the jurisdiction of a county, city, or
32 city and county.

33 **Comment.** Section 14999.31 is amended to reflect advances in recording technology and for
34 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
35 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”
36 “audio recording,” or “audio record,” as context required).

37 **Gov’t Code § 26202.6 (amended). Recordings of video monitoring and telephone and radio**
38 **communications**

39 SEC. _____. Section 26202.6 of the Government Code is amended to read:

40 26202.6. (a) Notwithstanding the provisions of Sections 26202, 26205, and
41 26205.1, the head of a department of a county, after one year, may destroy
42 recordings of routine video monitoring, and after 100 days may destroy recordings

1 of telephone and radio communications maintained by the department. This
2 destruction shall be approved by the legislative body and the written consent of the
3 agency attorney shall be obtained. In the event that the recordings are evidence in
4 any claim filed or any pending litigation, they shall be preserved until pending
5 litigation is resolved.

6 (b) For purposes of this section, “recordings of telephone and radio
7 communications” means the routine daily ~~taping~~ and recording of telephone
8 communications to and from a county and all radio communications relating to the
9 operations of the departments.

10 (c) For purposes of this section, “routine video monitoring” means ~~videotaping~~
11 video recording by a video or electronic imaging system designed to record the
12 regular and ongoing operations of the departments described in subdivision (a),
13 including mobile in-car video systems, jail observation and monitoring systems,
14 and building security ~~taping~~ recording systems.

15 (d) For purposes of this section, “department” includes a public safety
16 communications center operated by the county and the governing board of any
17 special district whose membership is the same as the membership of the board of
18 supervisors.

19 **Comment.** Section 26202.6 is amended to reflect advances in recording technology and for
20 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
21 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”
22 “audio recording,” or “audio record,” as context required).

23 **Gov’t Code § 26206.7 (amended). Destruction of duplicates of county records**

24 SEC. _____. Section 26206.7 of the Government Code is amended to read:

25 26206.7. Notwithstanding the provisions of Section 26202, the legislative body
26 of a county may prescribe a procedure whereby duplicates of county records less
27 than two years old may be destroyed if they are no longer required.

28 For purposes of this section, video recording media, ~~such as videotapes and~~
29 ~~films, and~~ including recordings of “routine video monitoring” pursuant to Section
30 26202.6, shall be considered duplicate records if the county keeps another record,
31 such as written minutes or an ~~audiotape~~ audio recording, of the event that is
32 recorded in the video medium. However, a video recording medium shall not be
33 destroyed or erased pursuant to this section for a period of at least 90 days after
34 occurrence of the event recorded thereon.

35 **Comment.** Section 26206.7 is amended to reflect advances in recording technology and for
36 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
37 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”
38 “audio recording,” or “audio record,” as context required).

39 **Gov’t Code § 26206.8 (amended). Transit agency security systems**

40 SEC. _____. Section 26206.8 of the Government Code is amended to read:

1 26206.8. (a) When installing new security systems, a transit agency operated by
2 a county shall only purchase and install equipment capable of storing recorded
3 images for at least one year, unless all of the following conditions apply:

4 (1) The transit agency has made a diligent effort to identify a security system
5 that is capable of storing recorded data for one year.

6 (2) The transit agency determines that the technology to store recorded data in
7 an economically and technologically feasible manner for one year is not available.

8 (3) The transit agency purchases and installs the best available technology with
9 respect to storage capacity that is both economically and technologically feasible
10 at that time.

11 (b) Notwithstanding any other provision of law, ~~videotapes or~~ video recordings
12 or other recordings made by security systems operated as part of a public transit
13 system shall be retained for one year, unless one of the following conditions
14 applies:

15 (1) The ~~videotapes or~~ video recordings or other recordings are evidence in any
16 claim filed or any pending litigation, in which case the ~~videotapes or~~ video
17 recordings or other recordings shall be preserved until the claim or the pending
18 litigation is resolved.

19 (2) The ~~videotapes or~~ video recordings or other recordings recorded an event
20 that was or is the subject of an incident report, in which case the ~~videotapes or~~
21 video recordings or other recordings shall be preserved until the incident is
22 resolved.

23 (3) The transit agency utilizes a security system that was purchased or installed
24 prior to January 1, 2004, or that meets the requirements of subdivision (a), in
25 which case the ~~videotapes or~~ video recordings or other recordings shall be
26 preserved for as long as the installed technology allows.

27 **Comment.** Section 26206.8 is amended to reflect advances in recording technology and for
28 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
29 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”
30 “audio recording,” or “audio record,” as context required).

31 **Gov’t Code § 27491.47 (amended). Removal of corneal eye tissue**

32 SEC. _____. Section 27491.47 of the Government Code is amended to read:

33 27491.47. (a) Notwithstanding any other provision of law, the coroner may, in
34 the course of an autopsy, remove and release or authorize the removal and release
35 of corneal eye tissue from a body within the coroner’s custody, if all of the
36 following conditions are met:

37 (1) The autopsy has otherwise been authorized.

38 (2) The coroner has no knowledge of objection to the removal and release of
39 corneal tissue having been made by the decedent or any other person specified in
40 Section 7151 of the Health and Safety Code and has obtained any one of the
41 following:

1 (A) A dated and signed written consent by the donor or any other person
2 specified in Section 7151 of the Health and Safety Code on a form that clearly
3 indicates the general intended use of the tissue and contains the signature of at
4 least one witness.

5 (B) Proof of the existence of a recorded telephonic consent by the donor or any
6 other person specified in Section 7151 of the Health and Safety Code in the form
7 of an audio ~~tape~~ recording of the conversation or a transcript of the recorded
8 conversation, which indicates the general intended use of the tissue.

9 (C) A document recording a verbal telephonic consent by the donor or any other
10 person specified in Section 7151 of the Health and Safety Code, witnessed and
11 signed by no less than two members of the requesting entity, hospital, eye bank, or
12 procurement organization, memorializing the consenting person's knowledge of
13 and consent to the general intended use of the gift.

14 The form of consent obtained under subparagraph (A), (B), or (C) shall be kept
15 on file by the requesting entity and the official agency for a minimum of three
16 years.

17 (3) The removal of the tissue will not unnecessarily mutilate the body, be
18 accomplished by enucleation, nor interfere with the autopsy.

19 (4) The tissue will be removed by a coroner, licensed physician and surgeon, or
20 a trained transplant technician.

21 (5) The tissue will be released to a public or nonprofit facility for transplant,
22 therapeutic, or scientific purposes.

23 (b) Neither the coroner nor medical examiner authorizing the removal of the
24 corneal tissue, nor any hospital, medical center, tissue bank, storage facility, or
25 person acting upon the request, order, or direction of the coroner or medical
26 examiner in the removal of corneal tissue pursuant to this section, shall incur civil
27 liability for the removal in an action brought by any person who did not object
28 prior to the removal of the corneal tissue, nor be subject to criminal prosecution
29 for the removal of the corneal tissue pursuant to the provisions of this section.

30 (c) This section may not be construed to interfere with the ability of a person to
31 make an anatomical gift pursuant to the Uniform Anatomical Gift Act (Chapter
32 3.5 (commencing with Section 7150) of Part 1 of Division 7 of the Health and
33 Safety Code).

34 **Comment.** Section 27491.7 is amended to reflect advances in recording technology and for
35 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
36 numerous references to "audiotape" in Civil Discovery Act with either "audio technology,"
37 "audio recording," or "audio record," as context required).

38 **Gov't Code § 34090.6 (amended). Destruction by department of recordings of routine video**
39 **monitoring and telephone and radio communications**

40 SEC. _____. Section 34090.6 of the Government Code is amended to read:

41 34090.6. (a) Notwithstanding the provisions of Section 34090, the head of a
42 department of a city or city and county, after one year, may destroy recordings of

1 routine video monitoring, and after 100 days may destroy recordings of telephone
2 and radio communications maintained by the department. This destruction shall be
3 approved by the legislative body and the written consent of the agency attorney
4 shall be obtained. In the event that the recordings are evidence in any claim filed
5 or any pending litigation, they shall be preserved until pending litigation is
6 resolved.

7 (b) For purposes of this section, “recordings of telephone and radio
8 communications” means the routine daily ~~taping and~~ recording of telephone
9 communications to and from a city, city and county, or department, and all radio
10 communications relating to the operations of the departments.

11 (c) For purposes of this section, “routine video monitoring” means ~~videotaping~~
12 video recording by a video or electronic imaging system designed to record the
13 regular and ongoing operations of the departments described in subdivision (a),
14 including mobile in-car video systems, jail observation and monitoring systems,
15 and building security taping systems.

16 (d) For purposes of this section, “department” includes a public safety
17 communications center operated by the city or city and county.

18 **Comment.** Section 34090.6 is amended to reflect advances in recording technology and for
19 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
20 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”
21 “audio recording,” or “audio record,” as context required).

22 **Gov’t Code § 34090.7 (amended). Destruction by legislative body of recordings of routine**
23 **video monitoring and telephone and radio communications**

24 SEC. _____. Section 34090.7 of the Family Code is amended to read:

25 34090.7. Notwithstanding the provisions of Section 34090, the legislative body
26 of a city may prescribe a procedure whereby duplicates of city records less than
27 two years old may be destroyed if they are no longer required.

28 For purposes of this section, video recording media, ~~such as videotapes and~~
29 ~~films, and~~ including recordings of “routine video monitoring” pursuant to Section
30 34090.6, shall be considered duplicate records if the city keeps another record,
31 such as written minutes or an ~~audiotape~~ audio recording, of the event that is
32 recorded in the video medium. However, a video recording medium shall not be
33 destroyed or erased pursuant to this section for a period of at least 90 days after
34 occurrence of the event recorded thereon.

35 **Comment.** Section 34090.7 is amended to reflect advances in recording technology and for
36 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
37 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”
38 “audio recording,” or “audio record,” as context required).

39 **Gov’t Code § 34090.8 (amended). Transit agency security systems**

40 SEC. _____. Section 34090.8 of the Government Code is amended to read:

41 34090.8. (a) When installing new security systems, a transit agency operated by
42 a city or city and county shall only purchase and install equipment capable of

1 storing recorded images for at least one year, unless all of the following conditions
2 apply:

3 (1) The transit agency has made a diligent effort to identify a security system
4 that is capable of storing recorded data for one year.

5 (2) The transit agency determines that the technology to store recorded data in
6 an economically and technologically feasible manner for one year is not available.

7 (3) The transit agency purchases and installs the best available technology with
8 respect to storage capacity that is both economically and technologically feasible
9 at that time.

10 (b) Notwithstanding any other provision of law, ~~videotapes or~~ video recordings
11 or other recordings made by security systems operated as part of a public transit
12 system shall be retained for one year, unless one of the following conditions
13 applies:

14 (1) The ~~videotapes or~~ video recordings or other recordings are evidence in any
15 claim filed or any pending litigation, in which case the ~~videotapes or~~ video
16 recordings or other recordings shall be preserved until the claim or the pending
17 litigation is resolved.

18 (2) The ~~videotapes or~~ video recordings or other recordings recorded an event
19 that was or is the subject of an incident report, in which case the ~~videotapes or~~
20 video recordings or other recordings shall be preserved until the incident is
21 resolved.

22 (3) The transit agency utilizes a security system that was purchased or installed
23 prior to January 1, 2004, or that meets the requirements of subdivision (a), in
24 which case the ~~videotapes or~~ video recordings or other recordings shall be
25 preserved for as long as the installed technology allows.

26 **Comment.** Section 34090.8 is amended to reflect advances in recording technology and for
27 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
28 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”
29 “audio recording,” or “audio record,” as context required).

30 **Gov’t Code § 50028 (amended). Coin-operated viewing machines**

31 SEC. _____. Section 50028 of the Government Code is amended to read:

32 50028. (a) The legislative body of any county, city, or city and county, whether
33 general law or chartered, may adopt, by ordinance, such rules and regulations as it
34 deems necessary, which require any coin-operated viewing machine to have
35 permanently attached thereto a tally counter which will count each coin, and
36 accumulate such count or the accumulated amount of money, deposited in such
37 coin-operated viewing machine. Such tally counter shall be resistant to tampering,
38 and shall not be capable of being reset to a lower number, and shall display the
39 count in such a manner that the accumulated total is readily visible near the coin
40 insertion slot or opening. For the purposes of this section, “coin-operated viewing
41 machine” means any projector, machine, television, or other device which displays
42 for viewing motion pictures, projection slides, filmstrips, photographic pictures,

1 video ~~tapes~~ recordings, or drawings, and which is operated by the viewer, or for
2 the viewer, by means of inserting a coin into the device, an attachment thereto, an
3 enclosure surrounding such device, or any other device electrically or
4 mechanically connected thereto. For the purposes of this section, “coin” means
5 any physical object, including, but not limited to, a piece of metal issued by the
6 federal government as money. “Coin-operated viewing machine” does not include
7 an electronic video game of skill wherein the image is created, generated, or
8 synthesized electronically, or coin-operated television receivers which display
9 commercial or public service broadcasts.

10 (b) Notwithstanding any other provision of law, any county ordinance adopted
11 pursuant to this section shall be enforceable within the incorporated, as well as the
12 unincorporated, area of the county, whether general law or chartered, unless a city
13 ordinance in direct conflict with such county ordinance has been adopted, in which
14 case such county ordinance shall be enforceable in the area of the county outside
15 of such city.

16 (c)(1) Any person who violates the provisions of the ordinance adopted pursuant
17 to this section shall be subject to a civil penalty not to exceed ten thousand dollars
18 (\$10,000) for each such machine and each day in which such violation occurs.

19 (2) In determining the amount of such penalty, the court shall take into
20 consideration all relevant circumstances, including but not limited to, the
21 frequency of inspection, the cash flow through such machine, the amount of
22 revenue derived by other such machines in the vicinity, prior revenues generated,
23 the nature and persistence of the violation, and prior violations by the same person
24 or establishment.

25 (d) No peace officer, as defined in Section 830 of the Penal Code, shall check
26 such tally counters, provided, however, that an ordinance adopted pursuant to this
27 section may provide for checking of such tally counters by a person or persons
28 employed by the adopting county, city, or city and county, other than a peace
29 officer, on a predetermined schedule.

30 (e) The provisions of this section shall not be construed to limit, or otherwise
31 affect, any other power of a county, city, or city and county to license, tax, or
32 regulate business or commercial enterprises or property within their jurisdiction,
33 but shall be in addition to such powers.

34 **Comment.** Section 50028 is amended to reflect advances in recording technology and for
35 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
36 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”
37 “audio recording,” or “audio record,” as context required).

38 **Gov’t Code § 53160 (amended). Destruction of recordings of routine video monitoring and**
39 **telephone and radio communications**

40 SEC. _____. Section 53160 of the Government Code is amended to read:

41 53160. (a) The head of a special district, after one year, may destroy recordings
42 of routine video monitoring, and after 100 days may destroy recordings of

1 telephone and radio communications maintained by the special district. This
2 destruction shall be approved by the legislative body and the written consent of the
3 agency attorney shall be obtained. In the event that the recordings are evidence in
4 any claim filed or any pending litigation, they shall be preserved until pending
5 litigation is resolved.

6 (b) For purposes of this article, “recordings of telephone and radio
7 communications” means the routine daily taping and recording of telephone
8 communications to and from a special district, and all radio communications
9 relating to the operations of the special district.

10 (c) For purposes of this article, “routine video monitoring” means ~~videotaping~~
11 video recording by a video or electronic imaging system designed to record the
12 regular and ongoing operations of the special district, including mobile in-car
13 video systems, jail observation and monitoring systems, and building security
14 taping systems.

15 (d) For purposes of this article, “special district” shall have the same meaning as
16 “public agency,” as that term is defined in Section 53050.

17 **Comment.** Section 53160 is amended to reflect advances in recording technology and for
18 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
19 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”
20 “audio recording,” or “audio record,” as context required).

21 **Gov’t Code § 53161 (amended). Destruction by legislative body of recordings of routine**
22 **video monitoring and telephone and radio communications**

23 SEC. _____. Section 53161 of the Government Code is amended to read:

24 53161. Notwithstanding Section 53160, the legislative body of a special district
25 may prescribe a procedure whereby duplicates of special district records less than
26 two years old may be destroyed if they are no longer required.

27 For purposes of this section, video recording media, ~~such as videotapes and~~
28 ~~films, and~~ including recordings of “routine video monitoring” pursuant to Section
29 53160, shall be considered duplicate records if the special district keeps another
30 record, such as written minutes or an ~~audiotape~~ audio recording, of the event that
31 is recorded in the video medium. However, a video recording medium shall not be
32 destroyed or erased pursuant to this section for at least 90 days after occurrence of
33 the event recorded thereon.

34 **Comment.** Section 53161 is amended to reflect advances in recording technology and for
35 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
36 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”
37 “audio recording,” or “audio record,” as context required).

38 **Gov’t Code § 53162 (amended). Transit agency security systems**

39 SEC. _____. Section 53162 of the Government Code is amended to read:

40 53162. (a) When installing new security systems, a transit agency operated by a
41 special district shall only purchase and install equipment capable of storing
42 recorded images for at least one year, unless all of the following conditions apply:

1 (1) The transit agency has made a diligent effort to identify a security system
2 that is capable of storing recorded data for one year.

3 (2) The transit agency determines that the technology to store recorded data in
4 an economically and technologically feasible manner for one year is not available.

5 (3) The transit agency purchases and installs the best available technology with
6 respect to storage capacity that is both economically and technologically feasible
7 at that time.

8 (b) Notwithstanding any other provision of law, ~~videotapes or video recordings~~
9 or other recordings made by security systems operated as part of a public transit
10 system shall be retained for one year, unless one of the following conditions
11 applies:

12 (1) The ~~videotapes or video recordings or other~~ recordings are evidence in any
13 claim filed or any pending litigation, in which case the ~~videotapes or video~~
14 recordings or other recordings shall be preserved until the claim or the pending
15 litigation is resolved.

16 (2) The ~~videotapes or video recordings or other~~ recordings recorded an event
17 that was or is the subject of an incident report, in which case the ~~videotapes or~~
18 video recordings or other recordings shall be preserved until the incident is
19 resolved.

20 (3) The transit agency utilizes a security system that was purchased or installed
21 prior to January 1, 2004, or that meets the requirements of subdivision (a), in
22 which case the ~~videotapes or video recordings or other~~ recordings shall be
23 preserved for as long as the installed technology allows.

24 **Comment.** Section 53162 is amended to reflect advances in recording technology and for
25 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
26 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”
27 “audio recording,” or “audio record,” as context required).

28 **Gov’t Code § 54953.5 (amended). Recording of public meeting**

29 SEC. _____. Section 54953.5 of the Government Code is amended to read:

30 54953.5. (a) Any person attending an open and public meeting of a legislative
31 body of a local agency shall have the right to record the proceedings with an audio
32 or video ~~tape~~ recorder or a still or motion picture camera in the absence of a
33 reasonable finding by the legislative body of the local agency that the recording
34 cannot continue without noise, illumination, or obstruction of view that
35 constitutes, or would constitute, a persistent disruption of the proceedings.

36 (b) Any ~~tape or film record~~ audio or video recording of an open and public
37 meeting made for whatever purpose by or at the direction of the local agency shall
38 be subject to inspection pursuant to the California Public Records Act (Chapter 3.5
39 (commencing with Section 6250) of Division 7 of Title 1), but, notwithstanding
40 Section 34090, may be erased or destroyed 30 days after the ~~taping or~~ recording.
41 Any inspection of a ~~video or tape~~ an audio or video recording shall be provided

1 without charge on a ~~video or tape player~~ equipment made available by the local
2 agency.

3 **Comment.** Section 54953.5 is amended to reflect advances in recording technology and for
4 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
5 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”
6 “audio recording,” or “audio record,” as context required).

7 **Gov’t Code § 54960 (amended). Action to stop or prevent violation of meeting provision**

8 SEC. _____. Section 54960 of the Government Code is amended to read:

9 54960. (a) The district attorney or any interested person may commence an
10 action by mandamus, injunction or declaratory relief for the purpose of stopping or
11 preventing violations or threatened violations of this chapter by members of the
12 legislative body of a local agency or to determine the applicability of this chapter
13 to actions or threatened future action of the legislative body, or to determine
14 whether any rule or action by the legislative body to penalize or otherwise
15 discourage the expression of one or more of its members is valid or invalid under
16 the laws of this state or of the United States, or to compel the legislative body to
17 ~~tape~~ audio record its closed sessions as hereinafter provided.

18 (b) The court in its discretion may, upon a judgment of a violation of Section
19 54956.7, 54956.8, 54956.9, 54956.95, 54957, or 54957.6, order the legislative
20 body to ~~tape~~ audio record its closed sessions and preserve the ~~tape~~ audio
21 recordings for the period and under the terms of security and confidentiality the
22 court deems appropriate.

23 (c)(1) Each recording so kept shall be immediately labeled with the date of the
24 closed session recorded and the title of the clerk or other officer who shall be
25 custodian of the recording.

26 (2) The ~~tapes~~ audio recordings shall be subject to the following discovery
27 procedures:

28 (A) In any case in which discovery or disclosure of the ~~tape~~ audio recording is
29 sought by either the district attorney or the plaintiff in a civil action pursuant to
30 Section 54959, 54960, or 54960.1 alleging that a violation of this chapter has
31 occurred in a closed session which has been recorded pursuant to this section, the
32 party seeking discovery or disclosure shall file a written notice of motion with the
33 appropriate court with notice to the governmental agency which has custody and
34 control of the ~~tape~~ audio recording. The notice shall be given pursuant to
35 subdivision (b) of Section 1005 of the Code of Civil Procedure.

36 (B) The notice shall include, in addition to the items required by Section 1010 of
37 the Code of Civil Procedure, all of the following:

38 (i) Identification of the proceeding in which discovery or disclosure is sought,
39 the party seeking discovery or disclosure, the date and time of the meeting
40 recorded, and the governmental agency which has custody and control of the
41 recording.

1 (ii) An affidavit which contains specific facts indicating that a violation of the
2 act occurred in the closed session.

3 (3) If the court, following a review of the motion, finds that there is good cause
4 to believe that a violation has occurred, the court may review, in camera, the
5 recording of that portion of the closed session alleged to have violated the act.

6 (4) If, following the in camera review, the court concludes that disclosure of a
7 portion of the recording would be likely to materially assist in the resolution of the
8 litigation alleging violation of this chapter, the court shall, in its discretion, make a
9 certified transcript of the portion of the recording a public exhibit in the
10 proceeding.

11 (5) Nothing in this section shall permit discovery of communications which are
12 protected by the attorney-client privilege.

13 **Comment.** Section 54960 is amended to reflect advances in recording technology and for
14 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
15 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”
16 “audio recording,” or “audio record,” as context required).

17 **Gov’t Code § 68151 (amended). Definitions**

18 SEC. _____. Section 68151 of the Government Code is amended to read:

19 68151. The following definitions apply to this chapter:

20 (a) “Court record” shall consist of the following:

21 (1) All filed papers and documents in the case folder; but if no case folder is
22 created by the court, all filed papers and documents that would have been in the
23 case folder if one had been created.

24 (2) Administrative records filed in an action or proceeding, depositions, paper
25 exhibits, transcripts, including preliminary hearing transcripts, and ~~tapes~~
26 recordings of electronically recorded proceedings filed, lodged, or maintained in
27 connection with the case, unless disposed of earlier in the case pursuant to law.

28 (3) Other records listed under subdivision (j) of Section 68152.

29 (b) “Notice of destruction and no transfer” means that the clerk has given notice
30 of destruction of the superior court records open to public inspection, and that
31 there is no request and order for transfer of the records as provided in the
32 California Rules of Court.

33 (c) “Final disposition of the case” means that an acquittal, dismissal, or order of
34 judgment has been entered in the case or proceeding, the judgment has become
35 final, and no postjudgment motions or appeals are pending in the case or for the
36 reviewing court upon the mailing of notice of the issuance of the remittitur.

37 In a criminal prosecution, the order of judgment shall mean imposition of
38 sentence, entry of an appealable order (including, but not limited to, an order
39 granting probation, commitment of a defendant for insanity, or commitment of a
40 defendant as a narcotics addict appealable under Section 1237 of the Penal Code),
41 or forfeiture of bail without issuance of a bench warrant or calendaring of other
42 proceedings.

1 (d) “Retain permanently” means that the original court records shall never be
2 transferred or destroyed.

3 **Comment.** Section 68151 is amended to reflect advances in recording technology and for
4 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
5 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”
6 “audio recording,” or “audio record,” as context required).

7 **HEALTH AND SAFETY CODE**

8 **Health & Safety Code § 1569.69 (amended). Training of employees**

9 SEC. _____. Section 1569.69 of the Health and Safety Code is amended to read:

10 1569.69. (a) Each residential care facility for the elderly licensed under this
11 chapter shall ensure that each employee of the facility who assists residents with
12 the self-administration of medications meets the following training requirements:

13 (1) In facilities licensed to provide care for 16 or more persons, the employee
14 shall complete 16 hours of initial training. This training shall consist of eight hours
15 of hands-on shadowing training, which shall be completed prior to assisting with
16 the self-administration of medications, and eight hours of other training or
17 instruction, as described in subdivision (f), which shall be completed within the
18 first two weeks of employment.

19 (2) In facilities licensed to provide care for 15 or fewer persons, the employee
20 shall complete six hours of initial training. This training shall consist of two hours
21 of hands-on shadowing training, which shall be completed prior to assisting with
22 the self-administration of medications, and four hours of other training or
23 instruction, as described in subdivision (f), which shall be completed within the
24 first two weeks of employment.

25 (3) An employee shall be required to complete the training requirements for
26 hands-on shadowing training described in this subdivision prior to assisting any
27 resident in the self-administration of medications. The training and instruction
28 described in this subdivision shall be completed, in their entirety, within the first
29 two weeks of employment.

30 (4) The training shall cover all of the following areas:

31 (A) The role, responsibilities, and limitations of staff who assist residents with
32 the self-administration of medication, including tasks limited to licensed medical
33 professionals.

34 (B) An explanation of the terminology specific to medication assistance.

35 (C) An explanation of the different types of medication orders: prescription,
36 over-the-counter, controlled, and other medications.

37 (D) An explanation of the basic rules and precautions of medication assistance.

38 (E) Information on medication forms and routes for medication taken by
39 residents.

1 (F) A description of procedures for providing assistance with the self-
2 administration of medications in and out of the facility, and information on the
3 medication documentation system used in the facility.

4 (G) An explanation of guidelines for the proper storage, security, and
5 documentation of centrally stored medications.

6 (H) A description of the processes used for medication ordering, refills and the
7 receipt of medications from the pharmacy.

8 (I) An explanation of medication side effects, adverse reactions, and errors.

9 (5) To complete the training requirements set forth in this subdivision, each
10 employee shall pass an examination that tests the employee's comprehension of,
11 and competency in, the subjects listed in paragraph (3).

12 (6) Residential care facilities for the elderly shall encourage pharmacists and
13 licensed medical professionals to use plain English when preparing labels on
14 medications supplied to residents. As used in this section, "plain English" means
15 that no abbreviations, symbols, or Latin medical terms shall be used in the
16 instructions for the self-administration of medication.

17 (7) The training requirements of this section are not intended to replace or
18 supplant those required of all staff members who assist residents with personal
19 activities of daily living as set forth in Section 1569.625.

20 (8) The training requirements of this section shall be repeated if either of the
21 following occur:

22 (A) An employee returns to work for the same licensee after a break of service
23 of more than 180 consecutive calendar days.

24 (B) An employee goes to work for another licensee in a facility in which he or
25 she assists residents with the self-administration of medication.

26 (b) Each employee who received training and passed the exam required in
27 paragraph (5) of subdivision (a), and who continues to assist with the self-
28 administration of medicines, shall also complete four hours of in-service training
29 on medication-related issues in each succeeding 12-month period.

30 (c) The requirements set forth in subdivisions (a) and (b) do not apply to persons
31 who are licensed medical professionals.

32 (d) Each residential care facility for the elderly that provides employee training
33 under this section shall use the training material and the accompanying
34 examination that are developed by, or in consultation with, a licensed nurse,
35 pharmacist, or physician. The licensed residential care facility for the elderly shall
36 maintain the following documentation for each medical consultant used to develop
37 the training:

38 (1) The name, address, and telephone number of the consultant.

39 (2) The date when consultation was provided.

40 (3) The consultant's organization affiliation, if any, and any educational and
41 professional qualifications specific to medication management.

42 (4) The training topics for which consultation was provided.

1 (e) Each person who provides employee training under this section shall meet
2 the following education and experience requirements:

3 (1) A minimum of five hours of initial, or certified continuing, education or
4 three semester units, or the equivalent, from an accredited educational institution,
5 on topics relevant to medication management.

6 (2) The person shall meet any of the following practical experience or licensure
7 requirements:

8 (A) Two years full-time experience, within the last four years, as a consultant
9 with expertise in medication management in areas covered by the training
10 described ~~is~~ in subdivision (a).

11 (B) Two years full-time experience, or the equivalent, within the last four years,
12 as an administrator for a residential care facility for the elderly, during which time
13 the individual has acted in substantial compliance with applicable regulations.

14 (C) Two years full-time experience, or the equivalent, within the last four years,
15 as a direct care provider assisting with the self-administration of medications for a
16 residential care facility for the elderly, during which time the individual has acted
17 in substantial compliance with applicable regulations.

18 (D) Possession of a license as a medical professional.

19 (3) The licensed residential care facility for the elderly shall maintain the
20 following documentation on each person who provides employee training under
21 this section:

22 (A) The person's name, address, and telephone number.

23 (B) Information on the topics or subject matter covered in the training.

24 (C) The time, dates, and hours of training provided.

25 (f) Other training or instruction, as required in paragraphs (1) and (2) of
26 subdivision (a), may be provided off site, and may use various methods of
27 instruction, including, but not limited to, all of the following:

28 (1) Lectures by presenters who are knowledgeable about medication
29 management.

30 (2) ~~Video instruction tapes~~ Recorded video instruction, interactive material,
31 online training, and books.

32 (3) Other written or visual materials approved by organizations or individuals
33 with expertise in medication management.

34 (g) Residential care facilities for the elderly licensed to provide care for 16 or
35 more persons shall maintain documentation that demonstrates that a consultant
36 pharmacist or nurse has reviewed the facility's medication management program
37 and procedures at least twice a year.

38 (h) Nothing in this section authorizes unlicensed personnel to directly administer
39 medications.

40 (i) This section shall become operative on January 1, 2008.

41 **Comment.** Subdivision (e)(2) of Section 1569.69 is amended to correct a typographical error.

42 Subdivision (f)(2) is amended to reflect advances in recording technology and for consistency
43 of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing numerous references

1 to “audiotape” in Civil Discovery Act with either “audio technology,” “audio recording,” or
2 “audio record,” as context required).

3 **Health & Safety Code § 1736.5 (amended). Grounds for denial of application or certificate**

4 SEC. _____. Section 1736.5 of the Health and Safety Code is amended to read:

5 1736.5. (a) The state department shall deny a training application and deny,
6 suspend, or revoke a certificate issued under this article if the applicant or
7 certificate holder has been convicted of a violation or attempted violation of any of
8 the following Penal Code provisions: Section 187, subdivision (a) of Section 192,
9 Section 203, 205, 206, 207, 209, 210, 210.5, 211, 220, 222, 243.4, 245, 261, 262,
10 or 264.1, Sections 265 to 267, inclusive, Section 273a, 273d, 273.5, or 285,
11 subdivisions (c), (d), (f), and (g) of Section 286, Section 288, subdivisions (c), (d),
12 (f), and (g) of Section 288a, Section 288.5, 289, 289.5, 368, 451, 459, 470, 475,
13 484, or 484b, Sections 484d to 484j, inclusive, Section 487, 488, 496, 503, 518, or
14 666, unless any of the following apply:

15 (1) The person was convicted of a felony and has obtained a certificate of
16 rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of
17 the Penal Code and the information or accusation against him or her has been
18 dismissed pursuant to Section 1203.4 of the Penal Code.

19 (2) The person was convicted of a misdemeanor and the information or
20 accusation against him or her has been dismissed pursuant to Section 1203.4 or
21 1203.4a of the Penal Code.

22 (3) The certificate holder was convicted of a felony or a misdemeanor, but has
23 previously disclosed the fact of each conviction to the department, and the
24 department has made a determination in accordance with law that the conviction
25 does not disqualify the applicant from certification.

26 (b) An application or certificate shall be denied, suspended, or revoked upon
27 conviction in another state of an offense that, if committed or attempted in this
28 state, would have been punishable as one or more of the offenses set forth in
29 subdivision (a), unless evidence of rehabilitation comparable to the certificate of
30 rehabilitation or dismissal of a misdemeanor set forth in paragraph (1) or (2) of
31 subdivision (a) is provided.

32 (c)(1) The state department may deny an application or deny, suspend, or revoke
33 a certificate issued under this article for any of the following:

34 (A) Unprofessional conduct, including, but not limited to, incompetence, gross
35 negligence, physical, mental, or verbal abuse of patients, or misappropriation of
36 property of patients or others.

37 (B) Conviction of a crime substantially related to the qualifications, functions,
38 and duties of a home health aide, irrespective of a subsequent order under Section
39 1203.4, 1203.4a, or 4852.13 of the Penal Code, where the state department
40 determines that the applicant or certificate holder has not adequately demonstrated
41 that he or she has been rehabilitated and will present a threat to the health, safety,
42 or welfare of patients.

1 (C) Conviction for, or use of, any controlled substance as defined in Division 10
2 (commencing with Section 11000), or any dangerous drug, as defined in Section
3 4022 of the Business and Professions Code, or alcoholic beverages, to an extent or
4 in a manner dangerous or injurious to the home health aide, any other person, or
5 the public, to the extent that this use would impair the ability to conduct, with
6 safety to the public, the practice authorized by a certificate.

7 (D) Procuring a home health aide certificate by fraud, misrepresentation, or
8 mistake.

9 (E) Making or giving any false statement or information in conjunction with the
10 application for issuance of a home health aide certificate or training and
11 examination application.

12 (F) Impersonating any applicant, or acting as proxy for an applicant, in any
13 examination required under this article for the issuance of a certificate.

14 (G) Impersonating another home health aide, a licensed vocational nurse, or a
15 registered nurse, or permitting or allowing another person to use a certificate for
16 the purpose of providing nursing services.

17 (H) Violating or attempting to violate, directly or indirectly, or assisting in or
18 abetting the violation of, or conspiring to violate any provision or term of, this
19 article.

20 (2) In determining whether or not to deny an application or deny, suspend, or
21 revoke a certificate issued under this article pursuant to this subdivision, the
22 department shall take into consideration the following factors as evidence of good
23 character and rehabilitation:

24 (A) The nature and seriousness of the offense under consideration and its
25 relationship to their employment duties and responsibilities.

26 (B) Activities since conviction, including employment or participation in
27 therapy or education, that would indicate changed behavior.

28 (C) The time that has elapsed since the commission of the conduct or offense
29 referred to in subparagraph (A) or (B) and the number of offenses.

30 (D) The extent to which the person has complied with any terms of parole,
31 probation, restitution, or any other sanction lawfully imposed against the person.

32 (E) Any rehabilitation evidence, including character references, submitted by the
33 person.

34 (F) Employment history and current employer recommendations.

35 (G) Circumstances surrounding the commission of the offense that would
36 demonstrate the unlikelihood of repetition.

37 (H) Granting by the Governor of a full and unconditional pardon.

38 (I) A certificate of rehabilitation from a superior court.

39 (d) When the state department determines that a certificate shall be suspended,
40 the state department shall specify the period of actual suspension. The state
41 department may determine that the suspension shall be stayed, placing the
42 certificate holder on probation with specified conditions for a period not to exceed
43 two years. When the state department determines that probation is the appropriate

1 action, the certificate holder shall be notified that in lieu of the state department
2 proceeding with a formal action to suspend the certification and in lieu of an
3 appeal pursuant to subdivision (g), the certificate holder may request to enter into
4 a diversion program agreement. A diversion program agreement shall specify
5 terms and conditions related to matters, including, but not limited to, work
6 performance, rehabilitation, training, counseling, progress reports, and treatment
7 programs. If a certificate holder successfully completes a diversion program, no
8 action shall be taken upon the allegations that were the basis for the diversion
9 agreement. Upon failure of the certificate holder to comply with the terms and
10 conditions of an agreement, the state department may proceed with a formal action
11 to suspend or revoke the certification.

12 (e) A plea or verdict of guilty, or a conviction following a plea of nolo
13 contendere, shall be deemed a conviction within the meaning of this article. The
14 state department may deny an application or deny, suspend, or revoke a
15 certification based on a conviction as provided in this article when the judgment of
16 conviction is entered or when an order granting probation is made suspending the
17 imposition of sentence.

18 (f) Upon determination to deny an application or deny, revoke, or suspend a
19 certificate, the state department shall notify the applicant or certificate holder in
20 writing by certified mail of all of the following:

21 (1) The reasons for the determination.

22 (2) The applicant's or certificate holder's right to appeal the determination if the
23 determination was made under subdivision (c).

24 (g)(1) Upon written notification that the state department has determined that an
25 application shall be denied or a certificate shall be denied, suspended, or revoked
26 under subdivision (c), the applicant or certificate holder may request an
27 administrative hearing by submitting a written request to the state department
28 within 20 business days of receipt of the written notification. Upon receipt of a
29 written request, the state department shall hold an administrative hearing pursuant
30 to the procedures specified in Section 100171, except where those procedures are
31 inconsistent with this section.

32 (2) A hearing under this section shall be conducted by a hearing officer or
33 administrative law judge designated by the director at a location other than the
34 work facility convenient to the applicant or certificate holder. The hearing shall be
35 ~~tape~~ audio or video recorded and a written decision shall be sent by certified mail
36 to the applicant or certificate holder within 30 calendar days of the hearing. Except
37 as specified in subdivision (h), the effective date of an action to revoke or suspend
38 a certificate shall be specified in the written decision, or if no administrative
39 hearing is timely requested, the effective date shall be 21 business days from
40 written notification of the department's determination to revoke or suspend.

41 (h) The state department may revoke or suspend a certificate prior to any
42 hearing when immediate action is necessary in the judgment of the director to
43 protect the public welfare. Notice of this action, including a statement of the

1 necessity of immediate action to protect the public welfare, shall be sent in
2 accordance with subdivision (f). If the certificate holder requests an administrative
3 hearing pursuant to subdivision (g), the state department shall hold the
4 administrative hearing as soon as possible but not later than 30 calendar days from
5 receipt of the request for a hearing. A written hearing decision upholding or setting
6 aside the action shall be sent by certified mail to the certificate holder within 30
7 calendar days of the hearing.

8 (i) Upon the expiration of the term of suspension, he or she shall be reinstated by
9 the state department and shall be entitled to resume practice unless it is established
10 to the satisfaction of the state department that the person has practiced as a home
11 health aide in California during the term of suspension. In this event, the state
12 department shall revoke the person's certificate.

13 (j) Upon a determination to deny an application or deny, revoke, or suspend a
14 certificate, the department shall notify the employer of the applicant or certificate
15 holder in writing of that determination, and whether the determination is final, or
16 whether a hearing is pending relating to this determination. If a licensee or facility
17 is required to deny employment or terminate employment of the employee based
18 upon notice from the state that the employee is determined to be unsuitable for
19 employment under this section, the licensee or facility shall not incur criminal,
20 civil, unemployment insurance, workers' compensation, or administrative liability
21 as a result of that denial or termination.

22 **Comment.** Subdivision (g)(2) of Section 1736.5 is amended to reflect advances in recording
23 technology and for consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068
24 (replacing numerous references to "audiotape" in Civil Discovery Act with either "audio
25 technology," "audio recording," or "audio record," as context required).

26 **Health & Safety Code § 7150.5 (amended). Anatomical gift**

27 SEC. _____. Section 7150.5 of the Health and Safety Code is amended to read:

28 7150.5. (a) Except as provided in subdivision (b) of Section 12811 of, and
29 subdivision (b) of Section 13005 of, the Vehicle Code, an individual who is at
30 least 18 years of age, or an individual who is between 15 and 18 years of age as
31 specified in subdivision (m), may make an anatomical gift for any of the purposes
32 stated in subdivision (a) of Section 7153, limit an anatomical gift to one or more of
33 those purposes, or refuse to make an anatomical gift.

34 (b) An anatomical gift may be made only by one of the following:

35 (1) A document of gift signed by the donor.

36 (2) A document of gift signed by another individual and by two witnesses, all of
37 whom have signed at the direction and in the presence of the donor and of each
38 other, and state that it has been so signed.

39 (3) A document of gift orally made by a donor by means of a ~~tape~~ audio
40 recording in his or her own voice.

41 (c) If a document of gift is attached to or imprinted on a donor's motor vehicle
42 operator's or chauffeur's license, the document of gift shall comply with

1 subdivision (b). Revocation, suspension, expiration, or cancellation of the license
2 does not invalidate the anatomical gift.

3 (d) A document of gift may designate a particular physician or surgeon to carry
4 out the appropriate procedures. In the absence of a designation or if the designee is
5 not available, the donee or other person authorized to accept the anatomical gift
6 may employ or authorize any physician, surgeon, technician, or enucleator to carry
7 out the appropriate procedures.

8 (e) An anatomical gift by will takes effect upon death of the testator, whether or
9 not the will is probated. If, after death, the will is declared invalid for testamentary
10 purposes, the validity of the anatomical gift is unaffected.

11 (f) A donor may amend or revoke an anatomical gift, not made by will, only by
12 one or more of the following:

13 (1) A signed statement.

14 (2) An oral statement made in the presence of two individuals or by means of a
15 ~~tape~~ an audio recording in the donor's own voice.

16 (3) Any form of communication during a terminal illness or injury addressed to
17 a physician or surgeon.

18 (4) The delivery of a signed statement to a specified donee to whom a document
19 of gift had been delivered.

20 (g) The donor of an anatomical gift made by will may amend or revoke the gift
21 in the manner provided for amendment or revocation of wills, or as provided in
22 subdivision (f).

23 (h) An anatomical gift that is not revoked by the donor before death is
24 irrevocable and does not require the consent or concurrence of any person after the
25 donor's death.

26 (i) An individual may refuse to make an anatomical gift of the individual's body
27 or part by a writing signed in the same manner as a document of gift, a statement
28 attached to or imprinted on a donor's motor vehicle operator's or chauffeur's
29 license, or any other writing used to identify the individual as refusing to make an
30 anatomical gift. During a terminal illness or injury, the refusal may be an oral
31 statement or other form of communication.

32 (j) In the absence of contrary indications by the donor, an anatomical gift of a
33 part is neither a refusal to give other parts nor a limitation on an anatomical gift
34 under Section 7151 or on a removal or release of other parts under Section 7151.5.

35 (k) In the absence of contrary indications by the donor, a revocation or
36 amendment of an anatomical gift is not a refusal to make another anatomical gift.
37 If the donor intends a revocation to be a refusal to make an anatomical gift, the
38 donor shall make the refusal pursuant to subdivision (i).

39 (l) Any signed statement that is in compliance with this chapter, or a driver's
40 license or identification card that meets the requirements for validity set forth in
41 subdivision (b) of Section 12811 of the Vehicle Code or subdivision (b) of Section
42 13005 of the Vehicle Code, shall be honored and no further consent or approval

1 from the next of kin or other person listed in subdivision (a) of Section 7151 shall
2 be required.

3 (m) Notwithstanding subdivision (a), an individual who is between 15 and 18
4 years of age may make an anatomical gift for any purpose stated in subdivision (a)
5 of Section 7153, limit an anatomical gift to one or more of those purposes, refuse
6 to make an anatomical gift, or amend or revoke an anatomical gift, only upon the
7 written consent of a parent or guardian.

8 **Comment.** Section 7150.5 is amended to reflect advances in recording technology and for
9 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
10 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”
11 “audio recording,” or “audio record,” as context required).

12 **Health & Safety Code § 7151.5 (amended). Removal of body part from decedent**

13 SEC. _____. Section 7151.5 of the Health and Safety Code is amended to read:

14 7151.5. (a) Except as provided in Section 7152, the coroner or medical examiner
15 may release and permit the removal of a part from a body within that official’s
16 custody, for transplantation, therapy, or reconditioning, if all of the following
17 occur:

18 (1) The official has received a request for the part from a hospital, physician,
19 surgeon, or procurement organization or, in the case of a pacemaker, from a
20 person who reconditions pacemakers.

21 (2) A reasonable effort has been made to locate and inform persons listed in
22 subdivision (a) of Section 7151 of their option to make, or object to making, an
23 anatomical gift. Except in the case where the useful life of the part does not
24 permit, a reasonable effort shall be deemed to have been made when a search for
25 the persons has been underway for at least 12 hours. The search shall include a
26 check of local police missing persons records, examination of personal effects, and
27 the questioning of any persons visiting the decedent before his or her death or in
28 the hospital, accompanying the decedent’s body, or reporting the death, in order to
29 obtain information that might lead to the location of any persons listed in
30 subdivision (a) of Section 7151.

31 (3) The official does not know of a refusal or contrary indication by the decedent
32 or objection by a person having priority to act as listed in subdivision (a) of
33 Section 7151.

34 (4) The removal will be by a physician, surgeon, or technician; but in the case of
35 eyes, by one of them or by an enucleator.

36 (5) The removal will not interfere with any autopsy or investigation.

37 (6) The removal will be in accordance with accepted medical standards.

38 (7) Cosmetic restoration will be done, if appropriate.

39 (b) Except as provided in Section 7152, if the body is not within the custody of
40 the coroner or medical examiner, a hospital may release and permit the removal of
41 a part from a body if the hospital, after a reasonable effort has been made to locate
42 and inform persons listed in subdivision (a) of Section 7151 of their option to

1 make, or object to making, an anatomical gift, determines and certifies that the
2 persons are not available. A search for the persons listed in subdivision (a) of
3 Section 7151 may be initiated in anticipation of death, but, except in the case
4 where the useful life of the part does not permit, the determination may not be
5 made until the search has been underway for at least 12 hours. The search shall
6 include a check of local police missing persons records, examination of personal
7 effects, and the questioning of any persons visiting the decedent before his or her
8 death or in the hospital, accompanying the decedent's body, or reporting the death,
9 in order to obtain information that might lead to the location of any persons listed
10 in subdivision (a) of Section 7151.

11 (c) Except as provided in Section 7152, if the body is not within the custody of
12 the coroner or medical examiner or a hospital, the local public health officer may
13 release and permit the removal of any part from a body in the local public health
14 officer's custody for transplantation, therapy, or reconditioning if the requirements
15 of subdivision (a) are met.

16 (d) An official or hospital releasing and permitting the removal of a part shall
17 maintain a permanent record of the name of the decedent, the person making the
18 request, the date and purpose of the request, the part requested, any required
19 written or recorded telephonic consent, and the person to whom it was released.

20 (e) In the case of corneal material to be used for the purpose of transplantation,
21 the official releasing and permitting the removal of the corneal material and the
22 requesting entity shall obtain and keep on file for not less than three years a copy
23 of any one of the following:

24 (1) A dated and signed written consent by the donor or any other person
25 specified in Section 7151 on a form that clearly indicates the general intended use
26 of the tissue and contains the signature of at least one witness.

27 (2) Proof of the existence of a recorded telephonic consent by the donor or any
28 person specified in Section 7151 in the form of an audio ~~tape~~ recording of the
29 conversation or a transcript of the recorded conversation, which indicates the
30 general intended use of the tissue.

31 (3) A document recording a verbal telephonic consent by the donor or any other
32 person specified in Section 7151, witnessed and signed by no less than two
33 members of the requesting entity, hospital, eye bank, or procurement organization,
34 memorializing the consenting person's knowledge of and consent to the general
35 intended use of the gift.

36 These requirements are necessary only if the official agency chooses to
37 participate in the transfer of corneal tissue with the requesting entity.

38 (f) Neither the coroner nor medical examiner authorizing the removal of a body
39 part or tissue, nor any hospital, medical center, tissue bank, storage facility, or
40 person acting upon the request, order, or direction of the coroner or medical
41 examiner in the removal of a body part or tissue pursuant to this section, shall
42 incur civil liability for the removal in an action brought by any person who did not

1 object prior to the removal of the body part or tissue, nor be subject to criminal
2 prosecution for the removal of the body part or tissue pursuant to this section.

3 **Comment.** Subdivision (e)(2) of Section 7151.5 is amended to reflect advances in recording
4 technology and for consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068
5 (replacing numerous references to “audiotape” in Civil Discovery Act with either “audio
6 technology,” “audio recording,” or “audio record,” as context required).

7 **Health & Safety Code § 7158.3 (amended). Duties of donee of anatomical gift**

8 SEC. _____. Section 7158.3 of the Health and Safety Code is amended to read:

9 7158.3. (a) The following definitions shall apply for purposes of this section:

10 (1) “Cosmetic surgery” means surgery that is performed to alter or reshape
11 normal structures of the body in order to improve appearance.

12 (2) “Donee” means a hospital, as defined in subdivision (f) of Section 7150.1, or
13 an organ procurement organization, as defined in subdivision (j) of Section
14 7150.1, or a tissue bank licensed pursuant to Chapter 4.1 (commencing with
15 Section 1635) of Division 2.

16 (3) “Reconstructive surgery” means surgery performed to correct or repair
17 abnormal structures of the body caused by congenital defects, developmental
18 abnormalities, trauma, infection, tumors, or disease to do either of the following:

19 (A) To improve function.

20 (B) To create a normal appearance, to the extent possible.

21 (b) For purposes of accepting anatomical gifts, as defined in subdivision (a) of
22 Section 7150.1, a donee shall do all of the following:

23 (1) Revise existing informed consent forms and procedures to advise a donor or,
24 if the donor is deceased, the donor’s representative, that tissue banks work with
25 both nonprofit and for-profit tissue processors and distributors, that it is possible
26 that donated skin may be used for cosmetic or reconstructive surgery purposes,
27 and that donated tissue may be used for transplants outside of the United States.

28 (2) The revised consent form or procedure shall separately allow the donor or
29 donor’s representative to withhold consent for any of the following:

30 (A) Donated skin to be used for cosmetic surgery purposes.

31 (B) Donated tissue to be used for applications outside of the United States.

32 (C) Donated tissue to be used by for-profit tissue processors and distributors.

33 (3) A donee shall be deemed to have complied with paragraph (2) by
34 designating tissue that has been donated with specific restrictions on its use. Once
35 the donee transfers the tissue to a separate entity, the donee’s responsibility for
36 compliance with any restrictions on the tissue ceases.

37 (4) The donor may recover, in a civil action against any individual or entity that
38 fails to comply with this subdivision, civil penalties to be assessed in an amount
39 not less than one thousand dollars (\$1,000) and not more than five thousand
40 dollars (\$5,000), plus court costs, as determined by the court. A separate penalty
41 shall be assessed for each individual or entity that fails to comply with this
42 subdivision. Any civil penalty provided under this paragraph shall be in addition

1 to any license revocation or suspension, if appropriate, authorized under
2 subdivision (c).

3 (5) If the consent of the donor or donor's representative is obtained in writing,
4 the donee shall offer to provide the donor or donor's representative with a copy of
5 the completed consent form. If consent is obtained by telephone, the donee shall
6 advise the donor or donor's representative that the conversation will be ~~tape~~ audio
7 recorded for verification and enforcement purposes, and shall offer to provide the
8 donor or donor's representative with a written copy of the recorded telephonic
9 consent form.

10 (c) Violation of this section by a licensed health care provider constitutes
11 unprofessional conduct.

12 (d) This section shall not apply to the removal of sperm or ova pursuant to
13 Section 2260 of the Business and Professions Code.

14 **Comment.** Subdivision (b)(5) of Section 7158.3 is amended to reflect advances in recording
15 technology and for consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068
16 (replacing numerous references to "audiotape" in Civil Discovery Act with either "audio
17 technology," "audio recording," or "audio record," as context required).

18 **Health & Safety Code § 13220 (amended). Furnishing emergency procedures to persons**
19 **entering buildings**

20 SEC. _____. Section 13220 of the Health and Safety Code is amended to read:

21 13220. The owner or operator of any of the following buildings shall provide to
22 persons entering those buildings specific emergency procedures to be followed in
23 the event of fire, including procedures for handicapped and nonambulatory
24 persons:

25 (a) In the case of privately owned highrise structures, as defined in Section
26 13210, and office buildings two stories or more in height, the emergency
27 procedure information shall be made available in a conspicuous area of the
28 structure that is easily accessible to all persons entering the structure, designated
29 pursuant to regulations of the State Fire Marshal.

30 (b) In the case of hotels and motels, as defined in subdivision (b) of Section
31 25503.16 of the Business and Professions Code, the emergency procedure
32 information shall be posted in a conspicuous place in every room available for
33 rental in the hotel or motel, or, at the option of the hotel or motel operator, it shall
34 be provided through the use of brochures, pamphlets, ~~videotapes~~ video recordings,
35 or other means, pursuant to regulations adopted by the State Fire Marshal.

36 (c) In the case of apartment houses two stories or more in height that contain
37 three or more dwelling units, and where the front door opens into an interior
38 hallway or an interior lobby area, the emergency information shall be provided as
39 follows:

40 (1) Information for exiting the structure shall be posted on signs using
41 international symbols at every stairway landing, at every elevator landing, at an

1 intermediate point of any hallway exceeding 100 feet in length, at all hallway
2 intersections, and immediately inside all public entrances to the building.

3 (2) Information shall be provided to all tenants of record, through the use of
4 brochures, pamphlets, or ~~videotapes~~ video recordings, if any of these items is
5 available, or this requirement may be satisfied pursuant to regulations adopted by
6 the State Fire Marshal.

7 (3) If the owner or operator, or any individual acting on behalf of the owner or
8 operator, of an apartment house, as defined in this subdivision, negotiates a lease,
9 sublease, rental contract, or other term of tenancy contract or agreement in any
10 language other than English, the information required to be provided pursuant to
11 paragraph (2) of this subdivision shall be provided in English, in international
12 symbols, and in the four most common non-English languages spoken in
13 California, as determined by the State Fire Marshal.

14 (4) This subdivision shall become operative on July 1, 1996.

15 (d) On or before July 1, 1996, the State Fire Marshal shall adopt, for use in
16 apartment houses described in subdivision (c), a consumer-oriented model
17 brochure or pamphlet that includes general emergency procedure information in
18 English, in international symbols, and in the four most common non-English
19 languages spoken in California, as determined by the State Fire Marshal.

20 (e) An owner, agent, operator, translator, or transcriber who provides emergency
21 procedure information pursuant to this section in good faith and without gross
22 negligence shall be held harmless for any errors in the translation or transcription
23 of that emergency information. This limited immunity shall apply only to errors in
24 the translation or transcription and not to the providing of the information required
25 to be provided pursuant to this section.

26 (f) Unless expressly stated, nothing in this section shall be deemed to require an
27 owner or operator of any of the buildings listed in this section to provide
28 emergency procedure information in any language other than English, or through
29 the use of international symbols.

30 **Comment.** Section 13220 is amended to reflect advances in recording technology and for
31 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
32 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”
33 “audio recording,” or “audio record,” as context required).

34 **Health & Safety Code § 13221 (amended). Regulations for furnishing emergency**
35 **procedures**

36 SEC. _____. Section 13221 of the Health and Safety Code is amended to read:

37 13221. The State Fire Marshal shall adopt regulations for the furnishing of
38 emergency procedure information according to this chapter. Those regulations
39 may include the general contents of brochures, pamphlets, signs, or ~~videotapes~~
40 video recordings used in furnishing emergency procedure information, but shall
41 provide for at least the following:

42 (a) A reference to the posting of exit plans for the structure.

- 1 (b) A general explanation of operation of the fire alarm system of the structure.
- 2 (c) Other fire emergency procedures.

3 **Comment.** Section 13221 is amended to reflect advances in recording technology and for
4 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
5 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”
6 “audio recording,” or “audio record,” as context required).

7 **Health & Safety Code § 25201.11 (amended). Departmental copyright protection and other**
8 **rights**

9 SEC. _____. Section 25201.11 of the Health and Safety Code is amended to read:

10 25201.11. (a) Copyright protection and all other rights and privileges provided
11 pursuant to Title 17 of the United States Code are available to the department to
12 the fullest extent authorized by law, and the department may sell, lease, or license
13 for commercial or noncommercial use any work, including, but not limited to,
14 ~~videotapes~~ video recordings, ~~audiotapes~~ audio recordings, books, pamphlets, and
15 computer software as that term is defined in Section 6254.9 of the Government
16 Code, that the department produces whether the department is entitled to that
17 copyright protection or not.

18 (b) Any royalties, fees, or compensation of any type that is paid to the
19 department to make use of a work entitled to copyright protection shall be
20 deposited in the Hazardous Waste Control Account.

21 (c) Nothing in this section is intended to limit any powers granted to the
22 department pursuant to Section 6254.9 of the Government Code or any other
23 provision of law.

24 **Comment.** Section 25201.11 is amended to reflect advances in recording technology and for
25 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
26 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”
27 “audio recording,” or “audio record,” as context required).

28 **Health & Safety Code § 40828 (amended). Testimony by members of public**

29 SEC. _____. Section 40828 of the Health and Safety Code is amended to read:

30 40828. (a) A hearing board shall allow interested members of the public a
31 reasonable opportunity to testify with regards to the matter under consideration,
32 and shall consider such testimony in making its decision.

33 (b) The hearing board shall prepare a record of the witnesses and the testimony
34 of each witness at the hearing. Such a record may be ~~a tape~~ an audio recording.
35 The record shall be retained by the hearing board while the variance is in effect, or
36 for the period of one year, whichever is longer.

37 **Comment.** Section 40828 is amended to reflect advances in recording technology and for
38 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
39 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”
40 “audio recording,” or “audio record,” as context required).

41 **Health & Safety Code § 100171 (amended). Adjudicative hearing**

42 SEC. _____. Section 100171 of the Health and Safety Code is amended to read:

1 100171. Notwithstanding any other provision of law, whenever the department
2 is authorized or required by statute, regulation, due process (14th amendment,
3 United States Constitution; subdivision (a) of Section 7 of Article I, California
4 Constitution), or a contract, to conduct an adjudicative hearing leading to a final
5 decision of the director or the department, the following shall apply:

6 (a) The proceeding shall be conducted pursuant to the administrative
7 adjudication provisions of Chapter 4.5 (commencing with Section 11400) and
8 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of
9 the Government Code, except as specified in this section.

10 (b) Notwithstanding Section 11502 of the Government Code, whenever the
11 department conducts a hearing under Chapter 4.5 (commencing with Section
12 11400) or Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of
13 Title 2 of the Government Code, the hearing shall be conducted before an
14 administrative law judge selected by the department and assigned to a hearing
15 office that complies with the procedural requirements of Chapter 4.5 (commencing
16 with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code.

17 (c)(1) Notwithstanding Section 11508 of the Government Code, whenever the
18 department conducts a hearing under Chapter 4.5 (commencing with Section
19 11400) or Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of
20 Title 2 of the Government Code, the time and place of the hearing shall be
21 determined by the staff assigned to the hearing office of the department, except as
22 provided in paragraph (2) or unless the department by regulation specifies
23 otherwise.

24 (2) Formal hearings requested by institutional Medi-Cal providers and health
25 facilities shall be held in Sacramento.

26 (d)(1) Unless otherwise specified in this section, the following sections of the
27 Government Code shall apply to any adjudicative hearing conducted by the
28 department only if the department has not, by regulation, specified an alternative
29 procedure for the particular type of hearing at issue: Section 11503 (relating to
30 accusations), Section 11504 (relating to statements of issues), Section 11505
31 (relating to the contents of the statement to respondent), Section 11506 (relating to
32 the notice of defense), Section 11507.6 (relating to discovery rights and
33 procedures), Section 11508 (relating to the time and place of hearings), and
34 Section 11516 (relating to amendment of accusations).

35 (2) Any alternative procedure specified by the department in accordance with
36 this subdivision shall conform to the purpose of the Government Code provision it
37 replaces insofar as it is possible to do so consistent with the specific procedural
38 requirements applicable to the type of hearing at issue.

39 (3) Any alternative procedures adopted by the department under this subdivision
40 shall not diminish the amount of notice given of the issues to be heard by the
41 department or deprive appellants of the right to discovery suitable to the particular
42 proceedings. Except as specified in paragraph (2) of subdivision (c), modifications
43 of timeframes or of the place of hearing made by regulation may not lengthen

1 timeframes within which the department is required to act nor require hearings to
2 be held at a greater distance from the appellant's place of residence or business
3 than is the case under the otherwise applicable Government Code provision.

4 (e) The specific timelines specified in Section 11517 of the Government Code
5 shall not apply to any adjudicative hearing conducted by the department to the
6 extent that the department has, by regulation, specified different timelines for the
7 particular type of hearing at issue.

8 (f) In the case of any adjudicative hearing conducted by the department,
9 "transcript," as used in subdivision (c) of Section 11517 of the Government Code,
10 shall be deemed to include any alternative form of recordation of the oral
11 proceedings, including, but not limited to, an ~~audiotape~~ audio recording.

12 (g) Pursuant to Section 11415.50 of the Government Code, the department may,
13 by regulation, provide for any appropriate informal procedure to be used for an
14 informal level of review that does not itself lead to a final decision of the
15 department or the director. The procedures specified in Article 10 (commencing
16 with Section 11445.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the
17 Government Code shall not apply to any such an informal level of review.
18 Informal conferences concerning appeals by institutional Medi-Cal providers and
19 health facilities may be held in Sacramento or Los Angeles.

20 (h) Notwithstanding any other provision of law, any adjudicative hearing
21 conducted by the department that is conducted pursuant to a federal statutory or
22 regulatory requirement that contains specific procedures may be conducted
23 pursuant to those procedures to the extent they are inconsistent with the
24 procedures specified in this section.

25 (i) Nothing in this section shall apply to a fair hearing involving a Medi-Cal
26 beneficiary insofar as the hearing is, by agreement or otherwise, heard before an
27 administrative law judge employed by the State Department of Social Services, or
28 insofar as the hearing is being held pursuant to Division 4.5 (commencing with
29 Section 4500) of the Welfare and Institutions Code in connection with services
30 provided by the State Department of Developmental Services under applicable
31 federal medicaid waivers. Nothing in this subdivision shall be interpreted as
32 abrogating the authority of the State Department of Health Services as the single
33 state agency under the state medicaid plan.

34 (j) Nothing in this provision shall supersede express provisions of law that apply
35 to any hearing that is not adjudicative in nature or that does not involve due
36 process rights specific to an individual or specific individuals, as opposed to the
37 general public or a segment of the general public.

38 **Comment.** Subdivision (f) of Section 100171 is amended to reflect advances in recording
39 technology and for consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068
40 (replacing numerous references to "audiotape" in Civil Discovery Act with either "audio
41 technology," "audio recording," or "audio record," as context required).

1 **Health & Safety Code § 127240 (amended). Informal public hearing**

2 SEC. _____. Section 127240 of the Health and Safety Code is amended to read:

3 127240. (a) Notwithstanding subdivision (b), (c), (d), (e), or (f) of Section
4 127235, if the office orders a hearing on an application, the applicant may request
5 an informal hearing of the matter, described in this section, in lieu of, and in the
6 alternative to, the formal procedures described in subdivisions (b), (c), (d), (e), and
7 (f) of Section 127235.

8 (b) If an applicant requests an informal hearing and the office concurs with the
9 request, the office shall proceed as follows:

10 (1) Within five calendar days after receipt of the request for an informal public
11 hearing, the office shall order the informal public hearing by the service of a copy
12 of the order on the applicant. The order shall include the staff report and
13 recommendations prepared by staff of the office. Except as otherwise agreed by
14 the applicant and the office, the informal public hearing shall commence within 20
15 days of the date of the order. Upon the scheduling of the hearing, the office shall
16 promptly serve notice of the date, location, and time of the informal public hearing
17 upon the applicant. The office shall also publish a notice of the date, location, and
18 time of the informal public hearing in at least one newspaper of general circulation
19 in the health service area served by the applicant. The notice shall also include the
20 name and address of the applicant, the nature of the proposed project, and other
21 information, deemed relevant by the office.

22 (2) The informal public hearing shall not be conducted in accordance with
23 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of
24 the Government Code. The informal public hearing shall be conducted by an
25 employee of the office designated by the office director. The person conducting
26 the informal public hearing may exercise all powers relating to the conduct of the
27 hearing, including the power to reasonably limit the length of oral presentations by
28 any person who has been allowed to make a statement.

29 The informal public hearing shall be conducted as follows:

30 (A) The applicant shall be given an opportunity to present the merits of the
31 project and to address the issues raised by the staff report and recommendations.

32 (B) The office staff shall be given an opportunity to present their analysis of the
33 project.

34 (C) Other interested persons shall be given an opportunity to present written or
35 oral statements.

36 (D) The person conducting the informal public hearing may question any person
37 making a written or oral statement and may give the applicant and office staff an
38 opportunity to question any person who has made a written or oral statement.

39 (E) The applicant and staff shall be given an opportunity to make closing
40 statements.

41 (F) The office shall make ~~a tape~~ an audio or video recording of the hearing, and
42 copies of the ~~tape~~ recording shall be made available at cost upon reasonable
43 notice. However, the applicant shall have a right to bring a certified shorthand

1 reporter to be used in place of the ~~tape~~ audio or video recording, provided that he
2 or she provides the office with a copy of the transcript.

3 (c) The informal public hearing shall conclude within 10 calendar days after
4 commencement of the hearing unless one of the following occurs:

5 (1) The applicant agrees to extend the time for conclusion of the hearing.

6 (2) The hearing is ongoing and continuing during consecutive business days, in
7 which case it shall be concluded as soon as reasonably practicable thereafter.

8 (d) Within 10 days after the conclusion of the informal public hearing, the
9 person conducting the hearing shall render a proposed decision supported by
10 findings of fact, based solely upon the record of the hearing. The proposed
11 decision shall be served upon the applicant and the office staff.

12 (e) The director shall make a final decision on an application within 10 calendar
13 days after issuance of the proposed decision. The decisions shall either approve
14 the application, approve it with modifications, reject it, or approve it with
15 conditions mutually agreed upon by the applicant and the office. The failure of any
16 applicant to fulfill the conditions under which the certificate of need was granted
17 shall constitute grounds for revocation of the certificate of need.

18 (f) Notice of the substance of the office's decisions shall be published in a
19 newspaper of general circulation within the health service area served by the
20 applicant, within 10 calendar days following the decision.

21 (g) Whether or not an informal hearing is granted shall be at the discretion of the
22 office.

23 **Comment.** Section 127240 is amended to reflect advances in recording technology and for
24 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
25 numerous references to "audiotape" in Civil Discovery Act with either "audio technology,"
26 "audio recording," or "audio record," as context required).

27 INSURANCE CODE

28 **Ins. Code § 1758.97 (amended). Prerequisites to sale or offer to sell insurance**

29 SEC. _____. Section 1758.97 of the Insurance Code is amended to read:

30 1758.97. A credit insurance agent shall not sell or offer to sell insurance
31 pursuant to this article unless all of the following conditions are satisfied:

32 (a) The credit insurance agent provides brochures or other written materials to
33 the prospective purchaser that do all of the following:

34 (1) Summarize the material terms and conditions of coverage offered, including
35 the identity of the insurer.

36 (2) Describe the process for filing a claim, including a toll-free telephone
37 number to report a claim.

38 (3) Disclose any additional information on the price, benefits, exclusions,
39 conditions, or other limitations of those policies that the commissioner may by
40 rule prescribe.

1 (b) The credit insurance agent makes all of the following disclosures, either with
2 or as part of each individual policy or group certificate, or with a notice of
3 proposed insurance, or, if the insurance is sold at the same time and place as the
4 related credit transaction, in a statement acknowledged by the purchaser in writing
5 on a separate form, electronically, digitally, or by ~~tape~~ audio recording:

6 (1) That the purchase of the kinds of insurance prescribed in this article is not
7 required in order to secure the loan or an extension of credit.

8 (2) That the insurance coverage offered by the credit insurance agent may
9 provide a duplication of coverage already provided by a purchaser's other personal
10 insurance policies or by another source of coverage.

11 (3) That the endorsee is not qualified or authorized to evaluate the adequacy of
12 the purchaser's existing coverages, unless the individual is licensed pursuant to
13 Article 3 (commencing with Section 1631).

14 (4) That the customer may cancel the insurance at any time. If the customer
15 cancels within 30 days from the delivery of the insurance policy, certificate, or
16 notice of proposed insurance, the premium will be refunded in full. If the customer
17 cancels at any time thereafter, any unearned premium will be refunded in
18 accordance with applicable law.

19 (c) Evidence of coverage is provided to every person who elects to purchase that
20 coverage.

21 (d) Costs for the insurance are separately itemized in any loan, credit, or retail
22 agreement.

23 (e) The insurance is provided under an individual policy issued to the purchaser
24 or under a group or master policy issued to the organization licensed as a credit
25 insurance agent by an insurer authorized to transact the applicable kinds or types
26 of insurance in this state. Any of the conditions and disclosures specified in this
27 section shall be deemed satisfied if the consumer is otherwise provided with the
28 information required in this section by any other disclosures required by existing
29 federal or state law or regulations.

30 No statement, disclosure, or notice made for the purpose of compliance with
31 this section shall be construed to cause the policy form, certificate of insurance, or
32 notice of proposed insurance, by themselves, to be considered nonstandard forms,
33 as described in Article 6.9 (commencing with Section 2249) of Subchapter 2 of
34 Chapter 5 of Title 10 of the California Code of Regulations.

35 **Comment.** Subdivision (b) of Section 1758.97 is amended to reflect advances in recording
36 technology and for consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068
37 (replacing numerous references to "audiotape" in Civil Discovery Act with either "audio
38 technology," "audio recording," or "audio record," as context required).

39 **Ins. Code § 2071.1 (amended). Examination of insured**

40 SEC. _____. Section 2071.1 of the Insurance Code is amended to read:

41 2071.1. (a) This section applies to an examination of an insured under oath
42 pursuant to Section 2071 labeled "Requirements in case loss occurs" and other

1 relevant provisions of that section, and to any policy that insures property and
2 contains a provision for examining an insured under oath, when the policy is
3 originated or renewed on and after January 1, 2002.

4 The following are among the rights of each insured who is requested to submit
5 to an examination under oath:

6 (1) An insurer that determines that it will conduct an examination under oath of
7 an insured shall notify the insured of that determination and shall include a copy of
8 this section in the notification.

9 (2) An insurer may conduct an examination under oath only to obtain
10 information that is relevant and reasonably necessary to process or investigate the
11 claim.

12 (3) An examination under oath may only be conducted upon reasonable notice,
13 at a reasonably convenient place and for a reasonable length of time.

14 (4) The insured may be represented by counsel and may record the examination
15 proceedings in their entirety.

16 (5) The insurer shall notify the insured that, upon request and free of charge, it
17 will provide the insured with a copy of the transcript of the proceedings and ~~a tape~~
18 an audio or video recording of the proceedings, if one exists. Where an insured
19 requests a copy of the transcript, the ~~tape recording~~, or both, of their examination
20 under oath, the insurer shall provide it within 10 business days of receipt by the
21 insurer or its counsel of the transcript, the ~~tape recording~~, or both. An insured may
22 make sworn corrections to the transcript so it accurately reflects the testimony
23 under oath.

24 (6) In an examination under oath, an insured may assert any objection that can
25 be made in a deposition under state or federal law. However, if as a result of
26 asserting an objection an insured fails to provide an answer to a material question,
27 and that failure prevents the insurer from being able to determine the extent of loss
28 and validity of the claim, the rights of the insured under the contract may be
29 affected.

30 (7) An insured who submits a fraudulent claim may be subject to all criminal
31 and civil penalties applicable under law.

32 (b) The department shall conduct a study quantifying the number of
33 examinations under oath performed by carriers regulated by the department and
34 the number of contacts made by consumers regarding alleged concerns with the
35 utilization of the examination under oath process for the resolution of pending
36 claims. The department shall report both the number of examinations under oath
37 performed by each carrier and the number of justified and unjustified claims
38 alleged by insureds as defined in the Insurance Code. To the best extent
39 practicable, the department shall also determine if any of these complaints also
40 resulted in suspected fraudulent claims with the department's fraud division.

41 (c) The department shall also survey licensed carriers as to the number of
42 suspected fraudulent claims under residential property insurance policies that are
43 submitted to the department's fraud division as required by law, and that resulted,

1 or eventually resulted, in the utilization of the examination under oath process.
2 Policies of residential property insurance shall be as defined in Section 10087.

3 (d) The department shall submit the findings of this report to the Chairs of the
4 Assembly and Senate Committees on Insurance no later than March 1, 2003.

5 **Comment.** Subdivision (a)(5) of Section 2071.1 is amended to reflect advances in recording
6 technology and for consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068
7 (replacing numerous references to “audiotape” in Civil Discovery Act with either “audio
8 technology,” “audio recording,” or “audio record,” as context required).

9
10 **PENAL CODE**

11 **Penal Code § 298.1 (amended). Refusal to give specimen, sample or impression**

12 SEC. _____. Section 298.1 of the Penal Code is amended to read:

13 298.1. (a) As of the effective date of this chapter, any person who refuses to give
14 any or all of the following, blood specimens, saliva samples, or thumb or palm
15 print impressions as required by this chapter, once he or she has received written
16 notice from the Department of Justice, the Department of Corrections and
17 Rehabilitation, any law enforcement personnel, or officer of the court that he or
18 she is required to provide specimens, samples, and print impressions pursuant to
19 this chapter is guilty of a misdemeanor. The refusal or failure to give any or all of
20 the following, a blood specimen, saliva sample, or thumb or palm print impression
21 is punishable as a separate offense by both a fine of five hundred dollars (\$500)
22 and imprisonment of up to one year in a county jail, or if the person is already
23 imprisoned in the state prison, by sanctions for misdemeanors according to a
24 schedule determined by the Department of Corrections and Rehabilitation.

25 (b)(1) Notwithstanding subdivision (a), authorized law enforcement, custodial,
26 or corrections personnel, including peace officers as defined in Sections 830,
27 830.1, subdivision (d) of Section 830.2, Sections ~~830.5~~, 830.38, 830.5, or 830.55,
28 may employ reasonable force to collect blood specimens, saliva samples, or thumb
29 or palm print impressions pursuant to this chapter from individuals who, after
30 written or oral request, refuse to provide those specimens, samples, or thumb or
31 palm print impressions.

32 (2) The withdrawal of blood shall be performed in a medically approved manner
33 in accordance with the requirements of paragraph (2) of subdivision (b) of Section
34 298.

35 (3) The use of reasonable force as provided in this subdivision shall be carried
36 out in a manner consistent with regulations and guidelines adopted pursuant to
37 subdivision (c).

38 (c)(1) The Department of Corrections and Rehabilitation and the Division of
39 Juvenile Justice shall adopt regulations governing the use of reasonable force as
40 provided in subdivision (b), which shall include the following:

41 (A) “Use of reasonable force” shall be defined as the force that an objective,
trained, and competent correctional employee, faced with similar facts and

1 circumstances, would consider necessary and reasonable to gain compliance with
2 this chapter.

3 (B) The use of reasonable force shall not be authorized without the prior written
4 authorization of the supervising officer on duty. The authorization shall include
5 information that reflects the fact that the offender was asked to provide the
6 requisite specimen, sample, or impression and refused.

7 (C) The use of reasonable force shall be preceded by efforts to secure voluntary
8 compliance with this section.

9 (D) If the use of reasonable force includes a cell extraction, the regulations shall
10 provide that the extraction be ~~videotaped~~ video recorded.

11 (2) The Corrections Standards Authority shall adopt guidelines governing the
12 use of reasonable force as provided in subdivision (b) for local detention facilities,
13 which shall include the following:

14 (A) "Use of reasonable force" shall be defined as the force that an objective,
15 trained and competent correctional employee, faced with similar facts and
16 circumstances, would consider necessary and reasonable to gain compliance with
17 this chapter.

18 (B) The use of reasonable force shall not be authorized without the prior written
19 authorization of the supervising officer on duty. The authorization shall include
20 information that reflects the fact that the offender was asked to provide the
21 requisite specimen, sample, or impression and refused.

22 (C) The use of reasonable force shall be preceded by efforts to secure voluntary
23 compliance with this section.

24 (D) If the use of reasonable force includes a cell extraction, the extraction shall
25 be ~~videotaped~~ video recorded.

26 (3) The Department of Corrections and Rehabilitation, the Division of Juvenile
27 Justice, and the Corrections Standards Authority shall report to the Legislature not
28 later than January 1, 2005, on the use of reasonable force pursuant to this section.
29 The report shall include, but is not limited to, the number of refusals, the number
30 of incidents of the use of reasonable force under this section, the type of force
31 used, the efforts undertaken to obtain voluntary compliance, if any, and whether
32 any medical attention was needed by the prisoner or personnel as a result of force
33 being used.

34 **Comment.** Section 298.1 is amended to reflect advances in recording technology and for
35 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
36 numerous references to "audiotape" in Civil Discovery Act with either "audio technology,"
37 "audio recording," or "audio record," as context required).

38 Subdivision (b)(1) is amended to make a stylistic revision.

39 **Penal Code § 599aa (amended). Seizure of birds, animals and related items**

40 SEC. _____. Section 599aa of the Penal Code is amended to read:

41 599aa. (a) Any authorized officer making an arrest under Section 597.5 shall,
42 and any authorized officer making an arrest under Section 597b, 597c, 597j, or
43 599a may, lawfully take possession of all birds or animals and all paraphernalia,

1 implements or other property or things used or employed, or about to be
2 employed, in the violation of any of the provisions of this code relating to the
3 fighting of birds or animals that can be used in animal or bird fighting, in training
4 animals or birds to fight, or to inflict pain or cruelty upon animals or birds in
5 respect to animal or bird fighting.

6 (b) Upon taking possession, the officer shall inventory the items seized and
7 question the persons present as to the identity of the owner or owners of the items.
8 The inventory list shall identify the location where the items were seized, the
9 names of the persons from whom the property was seized, and the names of any
10 known owners of the property.

11 Any person claiming ownership or possession of any item shall be provided with
12 a signed copy of the inventory list which shall identify the seizing officer and his
13 or her employing agency. If no person claims ownership or possession of the
14 items, a copy of the inventory list shall be left at the location from which the items
15 were seized.

16 (c) The officer shall file with the magistrate before whom the complaint against
17 the arrested person is made, a copy of the inventory list and an affidavit stating the
18 affiant's basis for his or her belief that the property and items taken were in
19 violation of this code. On receipt of the affidavit, the magistrate shall order the
20 items seized to be held until the final disposition of any charges filed in the case
21 subject to subdivision (e).

22 (d) All animals and birds seized shall, at the discretion of the seizing officer, be
23 taken promptly to an appropriate animal storage facility. For purposes of this
24 subdivision, an appropriate animal storage facility is one in which the animals or
25 birds may be stored humanely. However, if an appropriate animal storage facility
26 is not available, the officer may cause the animals or birds used in committing or
27 possessed for the purpose of the alleged offenses to remain at the location at which
28 they were found. In determining whether it is more humane to leave the animals or
29 birds at the location at which they were found than to take the animals or birds to
30 an animal storage facility, the officer shall, at a minimum, consider the difficulty
31 of transporting the animals or birds and the adequacy of the available animal
32 storage facility. When the officer does not seize and transport all animals or birds
33 to a storage facility, he or she shall do both of the following:

34 (1) Seize a representative sample of animals or birds for evidentiary purposes
35 from the animals or birds found at the site of the alleged offenses. The animals or
36 birds seized as a representative sample shall be transported to an appropriate
37 animal storage facility.

38 (2) Cause all animals or birds used in committing or possessed for the purpose
39 of the alleged offenses to be banded, tagged, or marked by microchip, and
40 photographed or ~~videotaped~~ video recorded for evidentiary purposes.

41 (e)(1) If ownership of the seized animals or birds cannot be determined after
42 reasonable efforts, the officer or other person named and designated in the order as
43 custodian of the animals or birds may, after holding the animals and birds for a

1 period of not less than 10 days, petition the magistrate for permission to humanely
2 destroy or otherwise dispose of the animals or birds. The petition shall be
3 published for three successive days in a newspaper of general circulation. The
4 magistrate shall hold a hearing on the petition not less than 10 days after seizure of
5 the animals or birds, after which he or she may order the animals or birds to be
6 humanely destroyed or otherwise disposed of, or to be retained by the officer or
7 person with custody until the conviction or final discharge of the arrested person.
8 No animal or bird may be destroyed or otherwise disposed of until 4 days after the
9 order.

10 (2) Paragraph (1) shall apply only to those animals and birds seized under any of
11 the following circumstances:

12 (A) After having been used in violation of any of the provisions of this code
13 relating to the fighting of birds or animals.

14 (B) At the scene or site of a violation of any of the provisions of this code
15 relating to the fighting of birds or animals.

16 (f) Upon the conviction of the arrested person, all property seized shall be
17 adjudged by the court to be forfeited and shall then be destroyed or otherwise
18 disposed of as the court may order. Upon the conviction of the arrested person, the
19 court may order the person to make payment to the appropriate public entity for
20 the costs incurred in the housing, care, feeding, and treatment of the animals or
21 birds. Each person convicted in connection with a particular animal or bird,
22 excluding any person convicted as a spectator pursuant to Section 597b or 597c, or
23 subdivision (b) of Section 597.5, may be held jointly and severally liable for
24 restitution pursuant to this subdivision. This payment shall be in addition to any
25 other fine or other sentence ordered by the court. The court shall specify in the
26 order that the public entity shall not enforce the order until the defendant satisfies
27 all other outstanding fines, penalties, assessments, restitution fines, and restitution
28 orders. The court may relieve any convicted person of the obligation to make
29 payment pursuant to this subdivision for good cause but shall state the reasons for
30 that decision in the record. In the event of the acquittal or final discharge without
31 conviction of the arrested person, the court shall, on demand, direct the delivery of
32 the property held in custody to the owner. If the owner is unknown, the court shall
33 order the animals or birds to be humanely destroyed or otherwise disposed of.

34 **Comment.** Subdivision (d)(2) of Section 599aa is amended to reflect advances in recording
35 technology and for consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068
36 (replacing numerous references to “audiotape” in Civil Discovery Act with either “audio
37 technology,” “audio recording,” or “audio record,” as context required).

38 **Penal Code § 868.7 (amended). Closure of examination**

39 SEC. _____. Section 868.7 of the Penal Code is amended to read:

40 868.7. (a) Notwithstanding any other provision of law, the magistrate may, upon
41 motion of the prosecutor, close the examination in the manner described in Section
42 868 during the testimony of a witness:

1 (1) Who is a minor or a dependent person with a substantial cognitive
2 impairment, as defined in paragraph (3) of subdivision (f) of Section 288, and is
3 the complaining victim of a sex offense, where testimony before the general public
4 would be likely to cause serious psychological harm to the witness and where no
5 alternative procedures, including, but not limited to, ~~videotaped~~ video recorded
6 deposition or contemporaneous examination in another place communicated to the
7 courtroom by means of closed-circuit television, are available to avoid the
8 perceived harm.

9 (2) Whose life would be subject to a substantial risk in appearing before the
10 general public, and where no alternative security measures, including, but not
11 limited to, efforts to conceal his or her features or physical description, searches of
12 members of the public attending the examination, or the temporary exclusion of
13 other actual or potential witnesses, would be adequate to minimize the perceived
14 threat.

15 (b) In any case where public access to the courtroom is restricted during the
16 examination of a witness pursuant to this section, a transcript of the testimony of
17 the witness shall be made available to the public as soon as is practicable.

18 ~~This section shall become operative on January 1, 1987.~~

19 **Comment.** Subdivision (a)(1) of Section 868.7 is amended to reflect advances in recording
20 technology and for consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068
21 (replacing numerous references to “audiotape” in Civil Discovery Act with either “audio
22 technology,” “audio recording,” or “audio record,” as context required).

23 The second paragraph of subdivision (b) is deleted as obsolete.

24 **Penal Code § 1191.15 (amended). Victim statement**

25 SEC. _____. Section 1191.15 of the Penal Code is amended to read:

26 1191.15. (a) The court may permit the victim of any crime, or his or her parent
27 or guardian if the victim is a minor, or the next of kin of the victim if the victim
28 has died, to file with the court a written, ~~audiotaped~~ audio recorded, or ~~videotaped~~
29 video recorded statement, or statement stored on a ~~CD Rom, DVD, or any other~~
30 recording medium acceptable to the court, expressing his or her views concerning
31 the crime, the person responsible, and the need for restitution, in lieu of or in
32 addition to the person personally appearing at the time of judgment and sentence.
33 The court shall consider the statement filed with the court prior to imposing
34 judgment and sentence.

35 Whenever an audio recorded or video recorded statement or statement stored on
36 a ~~CD Rom, DVD, or other any~~ any medium is filed with the court, a written transcript
37 of the statement shall also be provided by the person filing the statement, and shall
38 be made available as a public record of the court after the judgment and sentence
39 have been imposed.

40 (b) Whenever a written, audio recorded, or video recorded statement or
41 statement stored on a ~~CD Rom, DVD, or other any~~ any medium is filed with the court,
42 it shall remain sealed until the time set for imposition of judgment and sentence
43 except that the court, the probation officer, and counsel for the parties may view

1 and listen to the statement not more than two court days prior to the date set for
2 imposition of judgment and sentence.

3 (c) No person may, and no court shall, permit any person to duplicate, copy, or
4 reproduce by any audio or visual means any statement submitted to the court
5 under the provisions of this section.

6 (d) Nothing in this section shall be construed to prohibit the prosecutor from
7 representing to the court the views of the victim or his or her parent or guardian or
8 the next of kin.

9 (e) In the event the court permits an audio recorded or video recorded statement
10 or statement stored on a ~~CD Rom, DVD, or other~~ any medium to be filed, the
11 court shall not be responsible for providing any equipment or resources needed to
12 assist the victim in preparing the statement.

13 **Comment.** Section 1191.15 is amended to reflect advances in recording technology and for
14 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
15 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”
16 “audio recording,” or “audio record,” as context required).

17 **Penal Code § 1203.098. (amended). Batterers’ intervention program facilitators**

18 SEC. _____. Section 1203.098 of the Penal Code is amended to read:

19 1203.098. (a) Unless otherwise provided, a person who works as a facilitator in
20 a batterers’ intervention program that provides programs for batterers pursuant to
21 subdivision (c) of Section 1203.097 shall complete the following requirements
22 before being eligible to work as a facilitator in a batterers’ intervention program:

23 (1) Forty hours of core-basic training. A minimum of eight hours of this
24 instruction shall be provided by a shelter-based or shelter-approved trainer. The
25 core curriculum shall include the following components:

26 (A) A minimum of eight hours in basic domestic violence knowledge focusing
27 on victim safety and the role of domestic violence shelters in a community-
28 coordinated response.

29 (B) A minimum of eight hours in multicultural, cross cultural, and multiethnic
30 diversity and domestic violence.

31 (C) A minimum of four hours in substance abuse and domestic violence.

32 (D) A minimum of four hours in intake and assessment, including the history of
33 violence and the nature of threats and substance abuse.

34 (E) A minimum of eight hours in group content areas focusing on gender roles
35 and socialization, the nature of violence, the dynamics of power and control, and
36 the affects of abuse on children and others as required by Section 1203.097.

37 (F) A minimum of four hours in group facilitation.

38 (G) A minimum of four hours in domestic violence and the law, ethics, all
39 requirements specified by the probation department pursuant to Section 1203.097,
40 and the role of batterers’ intervention programs in a coordinated-community
41 response.

1 (H) Any person that provides documentation of coursework, or equivalent
2 training, that he or she has satisfactorily completed, shall be exempt from that part
3 of the training that was covered by the satisfactorily completed coursework.

4 (I) The coursework that this person performs shall count towards the continuing
5 education requirement.

6 (2) Fifty-two weeks or no less than 104 hours in six months, as a trainee in an
7 approved batterers' intervention program with a minimum of a two-hour group
8 each week. A training program shall include at least one of the following:

9 (A) Cofacilitation internship in which an experienced facilitator is present in the
10 room during the group session.

11 (B) Observation by a trainer of the trainee conducting a group session via a one-
12 way mirror.

13 (C) Observation by a trainer of the trainee conducting a group session via a
14 video or audio ~~tape~~ recording.

15 (D) Consultation and or supervision twice a week in a six-month program or
16 once a week in a 52-week program.

17 (3) An experienced facilitator is one who has the following qualifications:

18 (A) Documentation on file, approved by the agency, evidencing that the
19 experienced facilitator has the skills needed to provide quality supervision and
20 training.

21 (B) Documented experience working with batterers for three years, and a
22 minimum of two years working with batterer's groups.

23 (C) Documentation by January 1, 2003, of coursework or equivalent training
24 that demonstrates satisfactory completion of the 40-hour basic-core training.

25 (b) A facilitator of a batterers' intervention program shall complete, as a
26 minimum continuing education requirement, 16 hours annually of continuing
27 education in either domestic violence or a related field with a minimum of 8 hours
28 in domestic violence.

29 (c) A person or agency with a specific hardship may request the probation
30 department, in writing, for an extension of time to complete the training or to
31 complete alternative training options.

32 (d)(1) An experienced facilitator, as defined in paragraph (3) of subdivision (a),
33 is not subject to the supervision requirements of this section, if they meet the
34 requirements of subparagraph (C) of paragraph (3) of subdivision (a).

35 (2) This section does not apply to a person who provides batterers' treatment
36 through a jail education program if the person in charge of that program
37 determines that such person has adequate education or training in domestic
38 violence or a related field.

39 (e) A person who satisfactorily completes the training requirements of a county
40 probation department whose training program is equivalent to or exceeds the
41 training requirements of this act shall be exempt from the training requirements of
42 this act.

1 **Comment.** Subdivision (a)(2)(C) of Section 1203.098 is amended to reflect advances in
2 recording technology and for consistency of terminology. For a similar reform, see 2002 Cal.
3 Stat. ch. 1068 (replacing numerous references to “audiotape” in Civil Discovery Act with either
4 “audio technology,” “audio recording,” or “audio record,” as context required).

5 **Penal Code § 1346 (amended). Recording of testimony of minor or developmentally**
6 **disabled victim**

7 SEC. _____. Section 1346 of the Penal Code is amended to read:

8 1346. (a) When a defendant has been charged with a violation of Section 220,
9 243.4, 261, 261.5, 264.1, 273a, 273d, 285, 286, 288, 288a, 288.5, 289, or 647.6,
10 where the victim either is a person 15 years of age or less or is developmentally
11 disabled as a result of mental retardation, as specified in subdivision (a) of Section
12 4512 of the Welfare and Institutions Code, the people may apply for an order that
13 the victim’s testimony at the preliminary hearing, in addition to being
14 stenographically recorded, be video recorded and preserved ~~on videotape~~.

15 (b) The application for the order shall be in writing and made three days prior to
16 the preliminary hearing.

17 (c) Upon timely receipt of the application, the magistrate shall order that the
18 testimony of the victim given at the preliminary hearing be ~~taken~~ video recorded
19 and preserved ~~on videotape~~. The ~~videotape~~ video recording shall be transmitted to
20 the clerk of the court in which the action is pending.

21 (d) If at the time of trial the court finds that further testimony would cause the
22 victim emotional trauma so that the victim is medically unavailable or otherwise
23 unavailable within the meaning of Section 240 of the Evidence Code, the court
24 may admit the ~~videotape~~ video recording of the victim’s testimony at the
25 preliminary hearing as former testimony under Section 1291 of the Evidence
26 Code.

27 (e) Any ~~videotape which is taken~~ video recording made pursuant to this section
28 is subject to a protective order of the court for the purpose of protecting the
29 privacy of the victim. This subdivision does not affect the provisions of
30 subdivision (b) of Section 868.7.

31 (f) Any ~~videotape~~ video recording made pursuant to this section shall be made
32 available to the prosecuting attorney, the defendant, and his or her attorney for
33 viewing during ordinary business hours. Any ~~videotape~~ video recording which is
34 made available pursuant to this section is subject to a protective order of the court
35 for the purpose of protecting the privacy of the victim.

36 (g) The ~~tape~~ video recording shall be destroyed after five years have elapsed
37 from the date of entry of judgment; provided, however, that if an appeal is filed,
38 the ~~tape~~ video recording shall not be destroyed until a final judgment on appeal
39 has been rendered.

40 **Comment.** Section 1346 is amended to reflect advances in recording technology and for
41 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
42 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”
43 “audio recording,” or “audio record,” as context required).

1 **Penal Code § 1346.1 (amended). Recording of testimony of victim of spousal rape or**
2 **infliction of corporal injury**

3 SEC. _____. Section 1346.1 of the Penal Code is amended to read:

4 1346.1. (a) When a defendant has been charged with a violation of Section 262
5 or subdivision (a) of Section 273.5, the people may apply for an order that the
6 victim's testimony at the preliminary hearing, in addition to being
7 stenographically recorded, be video recorded and preserved ~~on videotape~~.

8 (b) The application for the order shall be in writing and made three days prior to
9 the preliminary hearing.

10 (c) Upon timely receipt of the application, the magistrate shall order that the
11 testimony of the victim given at the preliminary hearing be ~~taken~~ video recorded
12 and preserved ~~on videotape~~. The ~~videotape~~ video recording shall be transmitted to
13 the clerk of the court in which the action is pending.

14 (d) If the victim's prior testimony given at the preliminary hearing is admissible
15 pursuant to the Evidence Code, then the ~~videotape recording~~ video recording of
16 that testimony may be introduced as evidence at trial.

17 **Comment.** Section 1346.1 is amended to reflect advances in recording technology and for
18 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
19 numerous references to "audiotape" in Civil Discovery Act with either "audio technology,"
20 "audio recording," or "audio record," as context required).

21 **Penal Code § 1347 (amended). Testimony of minors**

22 SEC. _____. Section 1347 of the Penal Code is amended to read:

23 1347. (a) It is the intent of the Legislature in enacting this section to provide the
24 court with discretion to employ alternative court procedures to protect the rights of
25 a child witness, the rights of the defendant, and the integrity of the judicial
26 process. In exercising its discretion, the court necessarily will be required to
27 balance the rights of the defendant or defendants against the need to protect a child
28 witness and to preserve the integrity of the court's truthfinding function. This
29 discretion is intended to be used selectively when the facts and circumstances in
30 the individual case present compelling evidence of the need to use these
31 alternative procedures.

32 (b) Notwithstanding any other law, the court in any criminal proceeding, upon
33 written notice by the prosecutor made at least three days prior to the date of the
34 preliminary hearing or trial date on which the testimony of the minor is scheduled,
35 or during the course of the proceeding on the court's own motion, may order that
36 the testimony of a minor 13 years of age or younger at the time of the motion be
37 taken by contemporaneous examination and cross-examination in another place
38 and out of the presence of the judge, jury, defendant or defendants, and attorneys,
39 and communicated to the courtroom by means of closed-circuit television, if the
40 court makes all of the following findings:

41 (1) The minor's testimony will involve a recitation of the facts of any of the
42 following:

1 (A) An alleged sexual offense committed on or with the minor.

2 (B) An alleged violent felony, as defined in subdivision (c) of Section 667.5, of
3 which the minor is a victim.

4 (C) An alleged felony offense specified in Section 273a or 273d of which the
5 minor is a victim.

6 (2) The impact on the minor of one or more of the factors enumerated in
7 subparagraphs (A) to (E), inclusive, is shown by clear and convincing evidence to
8 be so substantial as to make the minor unavailable as a witness unless closed-
9 circuit testimony is used.

10 (A) Testimony by the minor in the presence of the defendant would result in the
11 child suffering serious emotional distress so that the child would be unavailable as
12 a witness.

13 (B) The defendant used a deadly weapon in the commission of the offense.

14 (C) The defendant threatened serious bodily injury to the child or the child's
15 family, threatened incarceration or deportation of the child or a member of the
16 child's family, threatened removal of the child from the child's family, or
17 threatened the dissolution of the child's family in order to prevent or dissuade the
18 minor from attending or giving testimony at any trial or court proceeding, or to
19 prevent the minor from reporting the alleged sexual offense, or from assisting in
20 criminal prosecution.

21 (D) The defendant inflicted great bodily injury upon the child in the commission
22 of the offense.

23 (E) The defendant or his or her counsel behaved during the hearing or trial in a
24 way that caused the minor to be unable to continue his or her testimony.

25 In making the determination required by this section, the court shall consider the
26 age of the minor, the relationship between the minor and the defendant or
27 defendants, any handicap or disability of the minor, and the nature of the acts
28 charged. The minor's refusal to testify shall not alone constitute sufficient
29 evidence that the special procedure described in this section is necessary to obtain
30 the minor's testimony.

31 (3) The equipment available for use of closed-circuit television would accurately
32 communicate the image and demeanor of the minor to the judge, jury, defendant
33 or defendants, and attorneys.

34 (c) If the court orders the use of closed-circuit television, two-way closed-circuit
35 television shall be used, except that if the impact on the minor of one or more of
36 the factors enumerated in subparagraphs (A) to (E), inclusive, of paragraph (2) of
37 subdivision (b), is shown by clear and convincing evidence to be so substantial as
38 to make the minor unavailable as a witness even if two-way closed-circuit
39 television is used, one-way closed-circuit television may be used. The prosecution
40 shall give the defendant or defendants at least 30 days' written notice of the
41 prosecution's intent to seek the use of one-way closed-circuit television, unless
42 good cause is shown to the court why this 30-day notice requirement should not
43 apply.

1 (d)(1) The hearing on a motion brought pursuant to this section shall be
2 conducted out of the presence of the jury.

3 (2) Notwithstanding Section 804 of the Evidence Code or any other law, the
4 court, in determining the merits of the motion, shall not compel the minor to
5 testify at the hearing; nor shall the court deny the motion on the ground that the
6 minor has not testified.

7 (3) In determining whether the impact on an individual child of one or more of
8 the five factors enumerated in paragraph (2) of subdivision (b) is so substantial
9 that the minor is unavailable as a witness unless two-way or one-way closed-
10 circuit television is used, the court may question the minor in chambers, or at some
11 other comfortable place other than the courtroom, on the record for a reasonable
12 period of time with the support person, the prosecutor, and defense counsel
13 present. The defendant or defendants shall not be present. The court shall conduct
14 the questioning of the minor and shall not permit the prosecutor or defense counsel
15 to examine the minor. The prosecutor and defense counsel shall be permitted to
16 submit proposed questions to the court prior to the session in chambers. Defense
17 counsel shall be afforded a reasonable opportunity to consult with the defendant or
18 defendants prior to the conclusion of the session in chambers.

19 (e) When the court orders the testimony of a minor to be taken in another place
20 outside of the courtroom, the court shall do all of the following:

21 (1) Make a brief statement on the record, outside of the presence of the jury, of
22 the reasons in support of its order. While the statement need not include traditional
23 findings of fact, the reasons shall be set forth with sufficient specificity to permit
24 meaningful review and to demonstrate that discretion was exercised in a careful,
25 reasonable, and equitable manner.

26 (2) Instruct the members of the jury that they are to draw no inferences from the
27 use of closed-circuit television as a means of facilitating the testimony of the
28 minor.

29 (3) Instruct respective counsel, outside of the presence of the jury, that they are
30 to make no comment during the course of the trial on the use of closed-circuit
31 television procedures.

32 (4) Instruct the support witness, outside of the presence of the jury, that he or
33 she is not to coach, cue, or in any way influence or attempt to influence the
34 testimony of the minor.

35 (5) Order that a complete record of the examination of the minor, including the
36 images and voices of all persons who in any way participate in the examination, be
37 made video recorded and preserved, ~~on videotape~~ in addition to being
38 stenographically recorded. The ~~videotape~~ video recording shall be transmitted to
39 the clerk of the court in which the action is pending and shall be made available
40 for viewing to the prosecuting attorney, the defendant or defendants, and his or her
41 attorney during ordinary business hours. The ~~videotape~~ video recording shall be
42 destroyed after five years have elapsed from the date of entry of judgment. If an
43 appeal is filed, the ~~tape~~ video recording shall not be destroyed until a final

1 judgment on appeal has been ordered. Any ~~videotape that is taken~~ video recording
2 made pursuant to this section is subject to a protective order of the court for the
3 purpose of protecting the privacy of the witness. This subdivision does not affect
4 the provisions of subdivision (b) of Section 868.7.

5 (f) When the court orders the testimony of a minor to be taken in another place
6 outside the courtroom, only the minor, a support person designated pursuant to
7 Section 868.5, a nonuniformed bailiff, any technicians necessary to operate the
8 closed-circuit equipment, and, after consultation with the prosecution and the
9 defense, a representative appointed by the court, shall be physically present for the
10 testimony. A ~~videotape shall record~~ video recording shall be made of the image of
11 the minor and his or her testimony, and a separate ~~videotape shall record~~ video
12 recording shall be made of the image of the support person.

13 (g) When the court orders the testimony of a minor to be taken in another place
14 outside the courtroom, the minor shall be brought into the judge's chambers prior
15 to the taking of his or her testimony to meet for a reasonable period of time with
16 the judge, the prosecutor, and defense counsel. A support person for the minor
17 shall also be present. This meeting shall be for the purpose of explaining the court
18 process to the child and to allow the attorneys an opportunity to establish rapport
19 with the child to facilitate later questioning by closed-circuit television. No
20 participant shall discuss the defendant or defendants or any of the facts of the case
21 with the minor during this meeting.

22 (h) When the court orders the testimony of a minor to be taken in another place
23 outside the courtroom, nothing in this section prohibits the court from ordering the
24 minor to be brought into the courtroom for a limited purpose, including the
25 identification of the defendant or defendants as the court deems necessary.

26 (i) The examination shall be under oath, and the defendant or defendants shall be
27 able to see and hear the minor witness, and if two-way closed-circuit television is
28 used, the defendant's image shall be transmitted live to the witness.

29 (j) Nothing in this section affects the disqualification of witnesses pursuant to
30 Section 701 of the Evidence Code.

31 (k) The cost of examination by contemporaneous closed-circuit television
32 ordered pursuant to this section shall be borne by the court out of its existing
33 budget.

34 (l) Nothing in this section shall be construed to prohibit a defendant from being
35 represented by counsel during any closed-circuit testimony.

36 **Comment.** Section 1347 is amended to reflect advances in recording technology and for
37 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
38 numerous references to "audiotape" in Civil Discovery Act with either "audio technology,"
39 "audio recording," or "audio record," as context required).

40 Section 1347 is also amended to correct a punctuation error.

41 **Penal Code § 1347.5 (amended). Testimony of disabled victims**

42 SEC. _____. Section 1347.5 of the Penal Code is amended to read:

1 1347.5. (a) It is the intent of the Legislature, in enacting this section, to provide
2 the court with discretion to modify court procedures, as a reasonable
3 accommodation, to assure that adults and children with disabilities who have been
4 victims of an alleged sexual or otherwise specified offense are able to participate
5 effectively in criminal proceedings. In exercising its discretion, the court shall
6 balance the rights of the defendant against the right of the victim who has a
7 disability to full access and participation in the proceedings, while preserving the
8 integrity of the court's truthfinding function.

9 (1) For purposes of this section, the term "disability" is defined in paragraphs (1)
10 and (2) of subdivision (c) of Section 11135 of the Government Code.

11 (2) The right of the victim is not to confront the perpetrator, but derives under
12 both Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Sec. 794) and the
13 Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 and following) as
14 a right to participate in or benefit from the same services or services that are equal
15 or as effective as those enjoyed by persons without disabilities.

16 (b) Notwithstanding any other law, in any criminal proceeding in which the
17 defendant is charged with a violation of Section 220, 243.4, 261, 261.5, 264.1,
18 273a, 273d, 285, 286, 288, 288a, 288.5, or 289, subdivision (1) of Section 314,
19 Section 368, 647.6, or with any attempt to commit a crime listed in this
20 subdivision, committed with or upon a person with a disability, the court in its
21 discretion may make accommodations to support the person with a disability,
22 including, but not limited to, any of the following:

23 (1) Allow the person with a disability reasonable periods of relief from
24 examination and cross-examination during which he or she may retire from the
25 courtroom. The judge may also allow other witnesses in the proceeding to be
26 examined when the person with a disability retires from the courtroom.

27 (2) Allow the person with a disability to utilize a support person pursuant to
28 Section 868.5 or a regional center representative providing services to a
29 developmentally disabled individual pursuant to Article 1 (commencing with
30 Section 4620) or Article 2 (commencing with Section 4640) of Chapter 5 of
31 Division 4.5 of the Welfare and Institutions Code. In addition to, or instead of,
32 allowing the person with a disability to utilize a support person or regional center
33 representative pursuant to this paragraph, the court may allow the person with a
34 disability to utilize a person necessary to facilitate the communication or physical
35 needs of the person with a disability.

36 (3) Notwithstanding Section ~~68119~~ 68110 of the Government Code, the judge
37 may remove his or her robe if the judge believes that this formal attire prevents
38 full participation of the person with a disability because it is intimidating to him or
39 her.

40 (4) The judge, parties, witnesses, support persons, and court personnel may be
41 relocated within the courtroom to facilitate a more comfortable and personal
42 environment for the person with a disability as well as accommodating any
43 specific requirements for communication by that person.

1 (c) The prosecutor may apply for an order that the testimony of the person with
2 a disability at the preliminary hearing, in addition to being stenographically
3 recorded, be video recorded and preserved ~~on videotape~~.

4 (1) The application for the order shall be in writing and made three days prior to
5 the preliminary hearing.

6 (2) Upon timely receipt of the application, the judge shall order that the
7 testimony of the person with a disability given at the preliminary hearing be ~~taken~~
8 video recorded and preserved ~~on videotape~~. The ~~videotape~~ video recording shall
9 be transmitted to the clerk of the court in which the action is pending.

10 (3) If at the time of trial the court finds that further testimony would cause the
11 person with a disability emotional trauma so that he or she is medically
12 unavailable or otherwise unavailable within the meaning of Section 240 of the
13 Evidence Code, the court may admit the ~~videotape~~ video recording of his or her
14 testimony at the preliminary hearing as former testimony under Section 1291 of
15 the Evidence Code.

16 (4) Any ~~videotape that is taken~~ video recording made pursuant to this
17 subdivision is subject to a protective order of the court for the purpose of
18 protecting the privacy of the person with a disability. This subdivision does not
19 affect the provisions of subdivision (b) of Section 868.7.

20 (d) Notwithstanding any other law, the court in any criminal proceeding, upon
21 written notice of the prosecutor made at least three days prior to the date of the
22 preliminary hearing or trial date on which the testimony of the person with a
23 disability is scheduled, or during the course of the proceeding on the court's own
24 motion, may order that the testimony of the person with a disability be taken by
25 contemporaneous examination and cross-examination in another place and out of
26 the presence of the judge, jury, and defendant, and communicated to the
27 courtroom by means of two-way closed-circuit television, if the court makes all of
28 the following findings:

29 (1) The person with a disability will be called on to testify concerning facts of an
30 alleged sexual offense, or other crime as specified in subdivision (b), committed
31 on or with that person.

32 (2) The impact on the person with a disability of one or more of the factors
33 enumerated in subparagraphs (A) to (D), inclusive, is shown by clear and
34 convincing evidence to be so substantial as to make the person with a disability
35 unavailable as a witness unless closed-circuit television is used. The refusal of the
36 person with a disability to testify shall not alone constitute sufficient evidence that
37 the special procedure described in this subdivision is necessary in order to
38 accommodate the disability. The court may take into consideration the relationship
39 between the person with a disability and the defendant or defendants.

40 (A) Threats of serious bodily injury to be inflicted on the person with a disability
41 or a family member, of incarceration, institutionalization, or deportation of the
42 person with a disability or a family member, or of removal of the person with a
43 disability from his or her residence by withholding needed services when the

1 threats come from a service provider, in order to prevent or dissuade the person
2 with a disability from attending or giving testimony at any trial or court
3 proceeding or to prevent that person from reporting the alleged offense or from
4 assisting in criminal prosecution.

5 (B) Use of a firearm or any other deadly weapon during the commission of the
6 crime.

7 (C) Infliction of great bodily injury upon the person with a disability during the
8 commission of the crime.

9 (D) Conduct on the part of the defendant or defense counsel during the hearing
10 or trial that causes the person with a disability to be unable to continue his or her
11 testimony.

12 (e)(1) The hearing on the motion brought pursuant to this subdivision shall be
13 conducted out of the presence of the jury.

14 (2) Notwithstanding Section 804 of the Evidence Code or any other law, the
15 court, in determining the merits of the motion, shall not compel the person with a
16 disability to testify at the hearing; nor shall the court deny the motion on the
17 ground that the person with a disability has not testified.

18 (3) In determining whether the impact on an individual person with a disability
19 of one or more of the factors enumerated under paragraph (2) of subdivision (d) is
20 so substantial that the person is unavailable as a witness unless the closed-circuit
21 television procedure is employed, the court may question the person with a
22 disability in chambers, or at some other comfortable place other than the
23 courtroom, on the record for a reasonable period of time with the support person
24 described under paragraph (2) of subdivision (b), the prosecutor, and defense
25 counsel present. At this time the court shall explain the process to the person with
26 a disability. The defendant or defendants shall not be present; however, the
27 defendant or defendants shall have the opportunity to contemporaneously observe
28 the proceedings by closed-circuit television. Defense counsel shall be afforded a
29 reasonable opportunity to consult with the defendant or defendants prior to the
30 conclusion of the session in chambers.

31 (f) When the court orders the testimony of a victim who is a person with a
32 disability to be taken in another place outside of the courtroom, the court shall do
33 all of the following:

34 (1) Make a brief statement on the record, outside of the presence of the jury, of
35 the reasons in support of its order. While the statement need not include traditional
36 findings of fact, the reasons shall be set forth with sufficient specificity to permit
37 meaningful review and to demonstrate that discretion was exercised in a careful,
38 reasonable, and equitable manner.

39 (2) Instruct the members of the jury that they are to draw no inferences from the
40 use of closed-circuit television as a means of assuring the full participation of the
41 victim who is a person with a disability by accommodating that individual's
42 disability.

1 (3) Instruct respective counsel, outside of the presence of the jury, that they are
2 to make no comment during the course of the trial on the use of closed-circuit
3 television procedures.

4 (4) Instruct the support person, if the person is part of the court's
5 accommodation of the disability, outside of the presence of the jury, that he or she
6 is not to coach, cue, or in any way influence or attempt to influence the testimony
7 of the person with a disability.

8 (5) Order that a complete record of the examination of the person with a
9 disability, including the images and voices of all persons who in any way
10 participate in the examination, be made and preserved ~~on videotape~~ by video
11 recording in addition to being stenographically recorded. The ~~videotape~~ video
12 recording shall be transmitted to the clerk of the court in which the action is
13 pending and shall be made available for viewing to the prosecuting attorney, the
14 defendant, and his or her attorney, during ordinary business hours. The ~~videotape~~
15 video recording shall be destroyed after five years have elapsed from the date of
16 entry of judgment. If an appeal is filed, the ~~tape~~ video recording shall not be
17 destroyed until a final judgment on appeal has been ordered. Any ~~videotape that is~~
18 ~~taken~~ video recording made pursuant to this section is subject to a protective order
19 of the court for the purpose of protecting the privacy of the person with a
20 disability. This subdivision does not affect the provisions of subdivision (b) of
21 Section 868.7.

22 (g) When the court orders the testimony of a victim who is a person with a
23 disability to be taken in another place outside the courtroom, nothing in this
24 section shall prohibit the court from ordering the victim to appear in the courtroom
25 for a limited purpose, including the identification of the defendant or defendants as
26 the court deems necessary.

27 (h) The examination shall be under oath, and the defendant shall be able to see
28 and hear the person with a disability. If two-way closed-circuit television is used,
29 the defendant's image shall be transmitted live to the person with a disability.

30 (i) Nothing in this section shall affect the disqualification of witnesses pursuant
31 to Section 701 of the Evidence Code.

32 (j) The cost of examination by contemporaneous closed-circuit television
33 ordered pursuant to this section shall be borne by the court out of its existing
34 budget.

35 (k) This section shall not be construed to obviate the need to provide other
36 accommodations necessary to ensure accessibility of courtrooms to persons with
37 disabilities nor prescribe a lesser standard of accessibility or usability for persons
38 with disabilities than that provided by Title II of the Americans with Disabilities
39 Act of 1990 (42 U.S.C. Sec. 12101 and following) and federal regulations adopted
40 pursuant to that act.

41 (l) The Judicial Council shall report to the Legislature, no later than two years
42 after the enactment of this subdivision, on the frequency of the use and

1 effectiveness of admitting the ~~videotape~~ video recording of testimony by means of
2 closed-circuit television.

3 **Comment.** Section 1347.5 is amended to reflect advances in recording technology and for
4 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
5 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”
6 “audio recording,” or “audio record,” as context required).

7 Subdivision (b)(3) is amended to correct a typographical error.

8 **Penal Code § 3043 (amended). Hearing relating to parole suitability or setting of parole date**

9 SEC. _____. Section 3043 of the Penal Code is amended to read:

10 3043. (a) Upon request, notice of any hearing to review or consider the parole
11 suitability or the setting of a parole date for any prisoner in a state prison shall be
12 sent by the Board of Prison Terms at least 30 days before the hearing to any victim
13 of a crime committed by the prisoner, or to the next of kin of the victim if the
14 victim has died. The requesting party shall keep the board apprised of his or her
15 current mailing address.

16 (b) The victim, next of kin, two members of the victim’s immediate family, or
17 two representatives designated for a particular hearing by the victim or, in the
18 event the victim is deceased or incapacitated, by the next of kin in writing prior to
19 the hearing have the right to appear, personally or by counsel, at the hearing and to
20 adequately and reasonably express his, her, or their views concerning the crime
21 and the person responsible, except that any statement provided by a representative
22 designated by the victim or next of kin shall be limited to comments concerning
23 the effect of the crime on the victim.

24 (c) A representative designated by the victim or the victim’s next of kin for
25 purposes of this section must be either a family or household member of the
26 victim. The board may not permit a representative designated by the victim or the
27 victim’s next of kin to provide testimony at a hearing, or to submit a statement to
28 be included in the hearing as provided in Section 3043.2, if the victim, next of kin,
29 or a member of the victim’s immediate family is present at the hearing, or if the
30 victim, next of kin, or a member of the victim’s immediate family has submitted a
31 statement as described in Section 3043.2.

32 (d) Nothing in this section is intended to allow the board to permit a victim’s
33 representative to attend a particular hearing if the victim, next of kin, or a member
34 of the victim’s immediate family is present at any hearing covered in this section,
35 or if the victim, next of kin, or member of the victim’s immediate family has
36 submitted a written, ~~audiotaped~~ audio recorded, or ~~videotaped~~ video recorded
37 statement.

38 (e) The board, in deciding whether to release the person on parole, shall consider
39 the statements of the victim or victims, next of kin, immediate family members of
40 the victim, and the designated representatives of the victim or next of kin, if
41 applicable, made pursuant to this section and shall include in its report a statement
42 of whether the person would pose a threat to public safety if released on parole.

1 In those cases where there are more than two immediate family members of the
2 victim who wish to attend any hearing covered in this section, the board may, in
3 its discretion, allow attendance of additional immediate family members or limit
4 attendance to the following order of preference: spouse, children, parents, siblings,
5 grandchildren, and grandparents.

6 The provisions of this section shall not be amended by the Legislature except by
7 statute passed in each house by rollcall vote entered in the journal, two-thirds of
8 the membership concurring, or by a statute that becomes effective only when
9 approved by the electors.

10 **Comment.** Subdivision (d) of Section 3043 is amended to reflect advances in recording
11 technology and for consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068
12 (replacing numerous references to “audiotape” in Civil Discovery Act with either “audio
13 technology,” “audio recording,” or “audio record,” as context required).

14 PUBLIC RESOURCES CODE

15 **Pub. Res. Code § 4423.1 (amended). Suspension, restriction, or prohibition of permit** 16 **burning**

17 SEC. _____. Section 4423.1 of the Public Resources Code is amended to read:

18 4423.1. Burning under permit by any person on public or private lands, except
19 within incorporated cities, may be suspended, restricted, or otherwise prohibited
20 by proclamation. Any of the following public officers may issue a proclamation,
21 which shall be applicable within their respective jurisdictions:

22 (a) The director or his or her designee.

23 (b) Any county fire warden with the approval of the director.

24 (c) The federal officers directing activities within California of the United States
25 Bureau of Land Management, the National Park Service, and the United States
26 Forest Service.

27 The proclamation may be issued when, in the judgment of the issuing public
28 official, the menace of destruction by fire to life, improved property, or natural
29 resources is, or is forecast to become, extreme due to critical fire weather, fire
30 suppression forces being heavily committed to control fires already burning, acute
31 dryness of the vegetation, or other factors that may cause the rapid spread of fire.
32 A proclamation is effective on issuance or at a time specified therein and shall
33 remain in effect until a proclamation removing the suspension, restriction, or
34 prohibition is issued. The proclamation may be effective for a single day or longer.
35 The proclamation shall declare the conditions that necessitate its issuance,
36 designate the geographic area to which it applies, require that all or specified
37 burning under permit be suspended, restricted, or prohibited until the conditions
38 necessitating the proclamation abate, and identify the public official issuing the
39 proclamation. The proclamation may be in the form of a verbal or ~~tape-recorded~~
40 audio recorded telephone message, a press release, or a posted order.

1 The proclamation may be issued without complying with Chapter 3.5
2 (commencing with Section 11340) and Chapter 5 (commencing with Section
3 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

4 **Comment.** Subdivision (c) of Section 4423.1 is amended to reflect advances in recording
5 technology and for consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068
6 (replacing numerous references to “audiotape” in Civil Discovery Act with either “audio
7 technology,” “audio recording,” or “audio record,” as context required).

8 REVENUE AND TAXATION CODE

9 **Rev. & Tax Code § 1611 (amended). Record of hearing**

10 SEC. _____. Section 1611 of the Revenue and Taxation Code is amended to read:

11 1611. The county board shall make a record of the hearing and, upon request,
12 shall furnish the party with ~~a tape~~ an audio recording or a transcript thereof at his
13 expense. Request for ~~a tape~~ an audio recording or a transcript may be made at any
14 time, but not later than 60 days following the final determination by the county
15 board.

16 **Comment.** Section 1611 is amended to reflect advances in recording technology and for
17 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
18 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”
19 “audio recording,” or “audio record,” as context required).

20 WELFARE AND INSTITUTIONS CODE

21 **Welf. & Inst. Code § 19639 (amended). Rules and regulations**

22 SEC. _____. Section 19639 of the Welfare and Institutions Code is amended to
23 read:

24 19639. (a) The director shall adopt and promulgate necessary rules and
25 regulations, in compliance with Chapter 3.5 (commencing with Section 11340) of
26 Part 1 of Division 3 of Title 2 of the Government Code, and do all things
27 necessary and proper to carry out this article. The director shall review these
28 regulations for possible revision at least every three years.

29 (b) These regulations shall include, but not be limited to:

30 (1) Uniform procedures for vendor application and termination.

31 (2) Criteria and standards for selecting vendors and matching vendors to
32 facilities which shall ensure that the most qualified person is selected for a facility.

33 (3) Equipment life standards and service standards for the inventory, repair, and
34 purchase of equipment, as required under subdivision (a) of Section 19626.5.

35 (4) The minimum requirements for installation of a facility.

36 (5) A fair minimum of return to vendors.

37 (6) Standards for training, in-service retraining, and upward mobility.

38 (7) The policies and procedures used by the department for collection and
39 deposit or disbursement of all vending facility income, including, but not limited

1 to, the frequency, rules regarding, and method of collection of funds from facilities
2 operated by licensed blind vendors and facilities operated by other individuals or
3 entities.

4 (c) The director shall provide a written copy of all rules and regulations adopted
5 pursuant to this section to all vendors. Upon request by a vendor, the rules and
6 regulations shall be supplied to the vendor ~~on cassette tapes~~ in an audio recording
7 in lieu of the written copy. In addition, the director shall notify all vendors of any
8 proposed changes to the rules and regulations.

9 **Comment.** Section 19639 is amended to reflect advances in recording technology and for
10 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
11 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”
12 “audio recording,” or “audio record,” as context required).